79-245

Supreme Court, U. S.
FILED
AUG 14 1979
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No.

FRANK T. BARR, et al.,

Plaintiffs,

VS.

THE UNITED METHODIST CHURCH, et al.,

Defendants.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEAL, STATE OF CALIFORNIA

ALBERT E. JENNER, JR.
KEITH F. BODE
EUGENE R. WEDOFF

JENNER & BLOCK
One IBM Plaza
Chicago, IL 60611
(312) 222-9350

SAMUEL W. WITWER, SR.
SAMUEL W. WITWER, JR.

WITWER, MORAN, BURLAGE & ATKINSON
125 S. Wacker Drive
Chicago, IL 60606
(312) 332-6000

ALLAN J. RENICHE
DANIEL R. SALAS
WILLIAM F. FAHEY

SULLIVAN, JONES & ARCHER
1400 Financial Square
600 'B' Street
San Diego, CA 92101
(714) 236-1611

La Salle Street Press — Chicago Printed in U.S.A.

TABLE OF CONTENTS

	PAGE
OPINIONS BELOW	2
JURISDICTION	2
QUESTIONS PRESENTED	2
CONSTITUTIONAL PROVISIONS AND STATUTE INVOLVED	3
RELATED MATTERS PENDING BEFORE THIS COURT	4
STATEMENT OF THE CASE	4
A. Nature of the Litigation	4
B. Allegations Concerning The United Methodist Church and Motion to Quash and Dismiss	6
C. Evidence Regarding The United Methodist Church	7
D. Rulings Below	15
REASONS FOR GRANTING THE WRIT	17
I. Section 388 of the California Code of Civil Procedure Cannot, Consistent with Due Process, be Interpreted to Allow an Action for Damages to be Brought Against an Aggregation of Persons and Entities Who Hold No Common Assets, and Who Have No Centralized Management	19
A. The Rule of Law Applied By the Court of Appeal	22
B. Fact Finding by the Court of Appeal	28
II. Section 388 of the California Code of Civil Procedure Cannot, Consistent with the Constitutional Guaranty of Free Exercise of Religion, be Interpreted to Render Liable to a Suit for Damages a Religious Denomination Composed of Many Separate Entities with No Unified Authoritarian Structure, Managing Board or Executive Officers and No Joint Denominational Assets	36
CONCLUSION	39
TABLE OF APPENDICES (A-1 through A-39)	A-1

TABLE OF AUTHORITIES

Cases

	PAGE
Bancroft-Whitney Co. v. McHugh, 166 Cal. 140 (1913)	28
Brady v. Reiner, 198 S.E. 2d 812 (W. Va. 1973)	31
California Clippers, Inc. v. United States Soccer Football Assn., 314 F.Supp. 1057 (N. D. Cal. 1970)	22
Cox Broadcasting Corp. v. Cohn, 420 U.S. 469 (1974)	34, 35
Hall v. Bureau of Employment Agencies, 64 Cal. App. 3d 482 (1976), cert. denied, 97 S.Ct. 2187 (1977)	28
Hansberry v. Lee, 311 U.S. 32 (1940)	27
Hidden Lake Development Co. v. District Court, 183 Colo. 168, 515 P. 2d 632 (1973)	22
Jardine v. Superior Court, 213 Cal. 301, 2 P.2d 756 (1931)	19, 20, 21, 23
Jones v. Wolf, U.S. , 47 U.S.L.W. 4962 (July 2, 1979)	37
Kedroff v. St. Nicholas Cathedral, 344 U.S. 94 (1952)	36
McClure v. Salvation Army, 460 F.2d 553 (5th Cir. 1972)	36
McCorkle v. City of Los Angeles, 70 Cal. 2d 252, 449 P.2d 453, 74 Cal. Rptr. 389 (1969)	35
Mullane v. Central Hanover Trust Co., 339 U.S. 306 (1950)	25
NLRB v. Catholic Bishop, U.S. , 47 U.S.L.W. 4283 (March 21, 1979)	36
North Dakota State Board of Pharmacy v. Snyder's Drug Stores, Inc., 414 U.S. 156 (1973)	35
Penrod Drilling Co. v. Johnson, 414 F.2d 1217 (5th Cir. 1969)	22
Roman Catholic Archbishop v. Superior Court, 15 Cal. App. 3d 405, 93 Cal. Rptr. 338 (1971)	38
Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976)	36, 37

	PAGE
Steuer v. Phelps, 41 Cal. App. 3d 468, 116 Cal. Rptr. 61 (1974)	21
Charles W. Trigg, et al. v. Pacific Methodist Investment Fund, et al., No. 78-0198-S (S.D. Cal., filed March 27, 1978	4, 7, 24
The United Methodist Church v. St. Louis Crossing Independent Church, 150 Ind. App. 574, 276 N.E. 2d 916 (1972)	30
United Mine Workers v. Coronado Coal Co., 259 U.S. 344 (1922)	20, 21, 23, 24
Wisconsin v. Yoder, 406 U.S. 205 (1972)	38
Yonce v. Miners Memorial Hospital Assn., Inc., 161 F. Supp. 178 (W.D. Va. 1958)	22

Statutes and Constitutional Provisions

United States Constitution, First Amendment	3, 36-38
United States Constitution, Fourteenth Amendment	3, 36
United States Code, Section 1257(3)	2, 34
California Code of Civil Procedure, Section 388	19, 36, 38
California Code of Civil Procedure, Section 418.10	34
Federal Rules of Civil Procedure, Rule 17(b)	4, 22

Miscellaneous

The Book of Discipline of the United Methodist Church (1976)	8-12, 14, 25-26, 28, 29
5 Cal. Jur. 2d § 45	35
3 Cal. Jur. 2d § 20 et. seq.	35
7 C.J.S. Associations § 1 (1937)	22
Note, 75 Harv. L. Rev. 1142 (1962)	31
Bishop Roy Short, United Methodism in Theory and Practice (1974)	30
Bishop Jack M. Tuell, The Organization of the United Methodist Church (rev. ed. 1977)	13, 14

IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No.

FRANK T. BARR, et al.,

Plaintiffs,

VS.

THE UNITED METHODIST CHURCH, et al.,

Defendants.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEAL, STATE OF CALIFORNIA

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

The Petitioners, Charles F. Golden, Paul W. Milhouse and James M. Walton-Myers, being the persons upon whom service of process was attempted in the name of the entire international religious denomination known as the United Methodist Church, a named defendant in the underlying action, pray that a Writ of Certiorari issue to review the judgment of the Court of Appeal, State of California, Fourth Appellate District, entered on March 8, 1979. That judgment reversed a March 20, 1978 decision by the trial court, which had quashed service of process on the Petitioners and dismissed the United Methodist Church as a party defendant.

OPINIONS BELOW

The judgment and opinion of the Court of Appeal, published at 90 Cal.App.3d 259, 153 Cal.Rptr. 322, is reproduced as Appendix ("App.") A to this Petition. The Minute Order decision of the trial court, entered March 20, 1978 and reversed by the Court of Appeal, is reproduced as App. B.

JURISDICTION

The California Supreme Court refused to grant a hearing to review the Court of Appeal's decision on May 17, 1979. See order included as App. D. This petition was filed within 90 days of that date. This Court has jurisdiction to review the Court of Appeal's judgment by Writ of Certiorari pursuant to 28 U.S.C. § 1257(3).[1]

QUESTIONS PRESENTED

This is one of a series of California cases, brought by the same plaintiffs or related parties, against "The United Methodist Church" seeking an aggregate of over one-half billion dollars in damages. This is the first time in history that a major international religious denomination has been held to be suable as an "unincorporated association". The case raises the following questions regarding the validity under the United States Constitution of state procedures regarding suits against such associations:

1. Can a California procedural statute relating to "unincorporated associations" be applied, consistent with the Constitutional guaranty of due process, to make amenable to a suit for damages an international religious denomination which, as a totality, (a) has no officers, executive board, or other decision-making mechanism, so that there is no

[1] The finality required by 28 U.S.C. § 1257 is discussed at pp. 34-35, *infra*.

person or body able to consult with counsel, plead, respond to discovery, or otherwise speak for the denomination in the course of the litigation and (b) holds no assets of any kind, so that a judgment against the denomination could be recovered only from the assets of separate jural entities bearing the denominational name?

2. Did the California Court of Appeal, by requiring the United Methodist Church to conduct litigation as if it were a unitary and quasi-corporate legal entity, based solely on the Court's own reading of Church documents, and contrary to expert testimony and internal ecclesiastical interpretation, interfere with the chosen government of the denomination, in violation of the right of free exercise of religion?

CONSTITUTIONAL PROVISIONS AND STATUTE INVOLVED

This case involves the interpretation of the following provisions:

1. The Fourteenth Amendment to the United States Constitution, which provides in pertinent part:

> ". . . nor shall any State deprive any person of life, liberty or property without due process of law . . ."

2. The First Amendment to the United States Constitution, which provides in pertinent part:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . ."

3. Section 388 of California's Code of Civil Procedure which provides:

> "(a) Any partnership or other unincorporated association whether organized for profit or not, may sue and be sued in the name which it has assumed or by which it is known.

"(b) Any member of the partnership or other unincorporated association may be joined as a party in an action against the unincorporated association. If service of process is made on such member as an individual, whether or not he is also served as a person upon whom service is made on behalf of the unincorporated association, a judgment against him based on his personal liability may be obtained in the action, whether such liability be joint, joint and several, or several."

RELATED MATTERS PENDING BEFORE THIS COURT

The essential issues raised in this petition are also raised in the context of Rule 17(b) of the Federal Rules of Civil Procedure in a petition for Writ of Certiorari, filed on June 11, 1979, in *Milhouse, et al.*, v. *United States District Court for the Southern District of California; Trigg, et al., Real Parties in Interest, No. 78-1855* (hereinafter "Trigg"). There, the United Methodist Church, named as a "control person", has been defaulted in a $5 million securities fraud case for failure to answer and conduct litigation as though it were a single party defendant. Petitioners respectfully request that the instant petition and the petition previously filed in *Trigg* be considered for consolidated review by this Court.

STATEMENT OF THE CASE

A. Nature of the Litigation.

All of the actions pending in California against "The United Methodist Church", including the *Trigg* case, now pending before the Court on Petition for Writ of Certiorari, pertain to the financial difficulties of Pacific Homes, Inc. (Pacific Homes), a California not-for-profit corporation which has, for many years, operated a group of facilities for the care of the elderly in California, Arizona and Hawaii. Many of the residents in the homes had entered into "lifetime care contracts" with Pacific Homes whereby, in

exchange for defined payments, Pacific Homes agreed to provide housing and care for the remainder of the residents' lives.

On February 18, 1977, Pacific Homes petitioned for relief under Chapter XI of the Bankruptcy Act. Subsequently, the proceeding was converted into a Chapter X reorganization proceeding with a court-appointed trustee who has since operated the Homes without any interruption in services.[2]

The financial condition of Pacific Homes required changes in the lifetime care contracts. In September of 1977, some 150 residents of Pacific Homes, purportedly on behalf of its 1,900 residents, brought the present case seeking either specific performance by all defendants of the contracts made with Pacific Homes, or, alternatively, damages allegedly caused by non-performance.

Because Pacific Homes is in proceedings under Chapter X the Bankruptcy Act, plaintiffs are looking to other parties, all of whom are strangers to the Pacific Homes contracts, to provide this relief. The defendants include four specified religious units within the United Methodist denomination: the Pacific and Southwest Annual Conference of the United Methodist Church, a California not-for-profit corporation, within whose geographic bounds the Homes functioned as an annual conference-related ministry; the General Council on Finance and Administration of the

[2] During the pending Chapter X reorganization proceedings, cash flow imbalances have stabilized, positive cash flow has been achieved and there is no expectation of closure of the Homes. In fact, the percentage of occupancy is increasing. To date, no resident has been required to leave the Homes for inability to pay increased rates. Contingency funds donated by concerned United Methodists and others are available to meet hardship cases, should any arise. Phillips Affidavit, Appendix exhibit B to Application for Stay Pending Review on Certiorari (filed June 12, 1979).

United Methodist Church, an Illinois not-for-profit corporation ("GCFA"); the General Board of Global Ministries of the United Methodist Church, a New York not-for-profit corporation; and the Division of Health and Welfare Ministries of the United Methodist Church, an Illinois not-for-profit corporation. Finally, Plaintiffs name as a defendant "The United Methodist Church" ("the denomination") in its entirety.

No issue is raised here, nor was any raised below, concerning the jural status of the four specifically named church units or of any other specific units within the denomination. All of the named units have appeared through their own separate counsel, answered, complied with discovery, and are prepared to defend on the merits. The issue before this Court is confined to the additional effort to name and sue generally the entire denomination as an "unincorporated association".

B. Allegations Concerning the United Methodist Church and Motion to Quash and Dismiss.

The Consolidated Complaint herein broadly describes "The United Methodist Church" as:

> ". . . an unincorporated association doing business in San Diego County, California, and consisting of numerous persons, associations, and corporations which were and are organized, and denominated and doing business as conferences, boards, commissions, councils and agencies."

(Consolidated Complaint at Par. 2). In fact, as detailed below, the denomination is composed of over 45,000 largely independent units, and 10 million individual members, without a common head, managing board, headquarters, or joint assets. After so defining the denomination as a broad "unincorporated association" the Complaint goes on to allege that the denomination is involved in a web of "alter ego"

or "agency" relationships with Pacific Homes and the other named defendants.

In an attempt to obtain personal jurisdiction over the denomination, plaintiffs served process upon the present petitioners, Charles F. Golden, a bishop who presides over the defendant Pacific and Southwest Annual Conference; Paul W. Milhouse, a former president of the denomination's Council of Bishops; and James M. Walton Myers, a former Assistant General Secretary of the defendant GCFA.

Messrs. Golden, Milhouse and Walton-Myers, appearing specially under Section 418.10 of the California Code of Civil Procedure, moved to quash service upon them and dismiss the Complaint, as against the denomination, for want of personal jurisdiction, (1) because the denomination does not have any quasi-corporate or unified structure or centralized administration which would render it an "unincorporated association" amenable to suit under Section 388 of the Code, (2) because neither they, nor anyone else, under the ecclesiastical law of United Methodism, is authorized to answer the Complaint, decide litigation issues, or otherwise appear and speak for the entire denomination—in fact, they are specifically forbidden to do so; and (3) because they personally had no authority to receive service of process for the entire denomination. The petitioners did not argue for any form of "religious immunity," but rather pointed out that any or all of the separate units composing United Methodism are amenable to suit. This is essentially the same position taken by the two persons chosen by plaintiffs to receive process in the name of the denomination in the *Trigg* case.

C. Evidence Regarding the United Methodist Church.

As in *Trigg*, petitioners supported their motion to quash and dismiss with the affidavits of several ecclesiastical experts within the United Methodist Church, explaining

the non-authoritarian and decentralized features of the denomination, and demonstrating that the denomination has never conducted affairs as if it were a single legal entity. Plaintiffs responded with an affidavit and chart prepared by their attorney, presenting his personal interpretation (a) of the ecclesiastical law and polity of the denomination and (b) of several documents concerning individual units of the denomination. The plaintiffs offered no expert testimony of any kind to refute the statements made by petitioners' church experts in support of the motion.

Petitioners' expert evidence reflected the ecclesiastical law of the United Methodist denomination, as officially stated in *The Book of Discipline of the United Methodist Church* (1976), the highest constitutional and legislative pronouncement of the denomination. Declaration of Murray H. Leiffer (January 6, 1978), Ex. H. Ex. AA thereto, ¶ 5; Affidavit of Ewing T. Wayland (March 7, 1978), Ex. V. Ex.H thereto; Affidavit of Paul Milhouse (January 5, 1978), Ex. H, Ex. G thereto, ¶ 3.[3] The denomination as a whole has never been incorporated. Ex. V, Ex. J thereto, ¶ 5. As detailed by *The Book of Discipline,* and explained in the affidavits, the denomination is an aggregation of many largely independent entities brought together in what is called "a connectional structure." See *The Book of Discipline,* at 231. There are basically four types of entities within the denomination, defined by the geographical scope of their ministry.

1. First, there are approximately 39,000 local churches affiliated with the United Methodist Church in the United States, and another 4,400 outside this country. Leiffer declaration, Ex. H, Ex. AA thereto, ¶ 10. Each local church is

[3] "Ex." refers to the exhibits contained in the jointly compiled record on review consisting of the materials submitted to the trial court regarding the motion to quash and dismiss.

responsible for its own financial and operating affairs. *Id.* The affairs of each local church are administered by an Administrative Board acting as an executive agency. *The Book of Discipline,* ¶¶ 247-250. No local church has been named as a defendant in the *Barr* case.

2. Operating in a broader geographical area, there are other church entities known as "annual conferences." *The Book of Discipline,* ¶¶ 700-751. This term refers to a meeting of clergy and laymen from many local churches in an area, and also refers to the area from which they come. There are 72 annual conferences within the United States and 42 such conferences distributed throughout Europe, Africa, and Asia. (These conferences are listed in App. F at A-33 to A-36.) See Leiffer declaration, Ex. H, Ex. AA thereto, ¶ 10. The members of the annual conferences regularly meet once a year to review matters of common concern, and to develop and support benevolent programs within their boundaries. *Id.,* ¶ 13. An example of such programs is provided by the Pacific Homes project which gave rise to the present litigation; this was a ministry related to the Pacific and Southwest Annual Conference. There are several hundred annual conference related agencies, such as hospitals, homes and orphanages, across the denomination. The funds necessary for such annual conference programs are sought directly or indirectly from the local churches, *The Book of Discipline,* ¶ 711, but an annual conference has no power to bind financially the denomination or any church unit associated with the denomination, other than itself. *id.,* ¶ 702(2).

The annual conferences are continuous bodies. They may meet more than once a year and have interim governing boards (*id.* ¶ 701(4)); they may incorporate (*id.* ¶ 701(1)); they each have a treasury and a treasurer (*id.* ¶ 717-718). No argument has been raised in this lawsuit about the jural status of the annual conferences or any other constituent

units of the denomination. In the *Barr* case, only one annual conference has been named as a defendant, the Pacific and Southwest Annual Conference, a California non-profit corporation. It has appeared and answered.

3. Next, in order of increasing geographical scope, are fourteen "jurisdictional" and "central" conferences. *The Book of Discipline,* ¶¶ 620-652; Leiffer declaration, Ex. H, Ex. AA thereto, ¶ 21. One of their principal functions is the election of bishops. Id., ¶ 22. The bishops of the denomination ordain and appoint ministers to the local churches. *The Book of Discipline,* ¶¶ 514-515, and preside, without voting, over annual conferences, whose direction the bishops must follow, Leiffer declaration, Ex. H, Ex. AA thereto, ¶ 22. The bishops of the denomination, active and retired, compose the Council of Bishops, *The Book of Discipline,* ¶ 525. This body is essentially a consultative group; it has no power to speak for or control the denomination or to commit any entity within the denomination to action. Leiffer declaration, Ex. H, Ex. AA thereto, ¶ 22; Milhouse affidavit, Ex. H, Ex. G thereto, ¶ 7. Neither the Council of Bishops nor any of the jurisdictional or central conferences has been named as a defendant in *Barr.*

4. The national and global operations of the United Methodist denomination are the concern of the remaining denominational entities—the General Conference and "general" boards. *The Book of Discipline,* ¶¶ 601-612. Every four years, delegates elected by the annual conferences assemble to form the General Conference, which serves as a legislative assembly. Leiffer declaration, Ex. H, Ex. thereto, ¶ 18. *The Book of Discipline* is the body of law enacted by the General Conference.[4] Only the General Conference can speak for the denomination as a whole. *The*

[4] The highest judicatory of the denomination, charged with interpretation of *The Book of Discipline,* is the Judicial Council. *The Book of Discipline,* ¶¶ 60-63.

Book of Discipline, ¶ 612(1). Successive General Conferences have established various boards and councils to carry out the work of the denomination on a worldwide basis. There are presently 13 such "general" boards. Leiffer declaration, Ex. 11, Ex. AA thereto, ¶ 20. All of these boards, and most of their subsidiary units, are incorporated. *Id.* However, the General Conference itself is not a continuing body. It meets quadrennially for approximately two weeks and then adjourns, *sine die.* It has no offices, and no permanent staff. *Id.,* ¶ 18. The General Conference may not delegate its functions to any other unit within the denomination during the four-year interval between its sessions. Decision No. 364 of Judicial Council, Ex. V, Exs. J, J-1 thereto.

The boards and councils established by the General Conference to perform the denomination's worldwide ministry receive their funds from the voluntary contributions of 10 million individual members of the denomination, through the local churches and annual conferences. About 94½ percent of the amounts donated by members of the denomination remain at the local level, for use by the local churches and annual conferences; the remaining 5½ percent contributed for world ministries, are identified as "general funds." This term does not denote unrestricted assets, but rather is used to signify that the funds are destined for ministries by the 13 "general" level agencies so designated because they are related to the General Conference, as opposed to some other sector of the denomination. Wayland Dep. at 215-217, 236-237; Wayland Affidavit No. 1, *Trigg* App. Ex. 2, ¶ 7. These funds are routed, under *The Book of Discipline* to GCFA, one of the 13 general level boards and an Illinois non-profit corporation. GCFA then acts as conduit to distribute these funds, in the manner specifically budgeted and directed by the General Conference. In this activity it is on occasion referred to as rendering "central treasury" services, but it is not the treasury or treasurer of the entire denomination. Wayland Dep. at 231.

In fact, GCFA's functions are essentially devoted to servicing eight of its twelve sister general level boards, and do not bring it into contact with the thousands of local churches or the vast majority of other non-general units composing the denomination. Wayland Dep. at 245-247; Wayland Affidavit No. 1, *Trigg,* App. Ex. 3, ¶ 4. In carrying out certain of its functions, GCFA sometimes works with a second general level board, the General Council on Ministries, which is charged with reviewing the Church's ministries. *The Book of Discipline,* ¶ 1001-1005. There is no question in this case about the jural, suable status of the general level boards.[5] GCFA and two other such units, the General Board of Global Ministries and the Health and Welfare Division have been named as defendants in *Barr.* All have appeared, answered, and provided extensive discovery.

The evidence before the trial court demonstrated that the church units listed above are interrelated and interconnected by a common faith and tradition, and by common representation at various conferences. However, it also showed that they operate with a high degree of independence. There is no chain of command linking these units nor are the levels described above layered vertically in any ascending order of authority or control. Rather, the basic constitutional units in the denomination are the 114 annual conferences, and no substantial changes in the organization and constitution of the denomination can be adopted without the concurrence of these conferences. *The Book of Discipline,* ¶ 37, 64. In the use of their funds, the separate annual conferences are not subject to the control of other

[5] GCFA contested the "long-arm" jurisdiction of a California court in the underlying case, *General Council on Finance and Administration* v. *Superior Court,* No. 78-300 in this Court, *cert. denied,* U.S. , 99 S. Ct. 281, (1978), but has never asserted that it was not a jural entity, nor did it raise in that case the issues presented here.

denominational bodies. Leiffer declaration, Ex. H., Ex. AA thereto, ¶ 13. Likewise, the general level boards are not subject to the control of any single person or council, but seek to carry out the programs of the General Conference in largely independent fashion. *Id.,* ¶ 20.

This and other decentralized characteristics of the denomination are noted by Bishop Tuell in his text. *The Organization of The United Methodist Church,* (rev. ed. 1977) at 127-129:

> "If someone had a complaint, and wanted to go to the head of the United Methodist Church with it, that head person would be hard to find. One might try the president of the Council of Bishops, but would discover that this person is primarily a presiding officer over the semi-annual meetings of the Council of Bishops. The president has no particular authority in the church at large not possessed by all other bishops. . .
>
> "One might try the general secretary of the General Council on Ministries, but would discover that this person, though head of an agency involved in coordinating the total work of the program agencies of the church, is by no means in charge of the total work of The United Methodist Church. If our complainant went to see the executive head of one of our boards or agencies, he or she would be told that that person has charge of only a certain portion of the work of the church. One might approach the presiding bishop of a session of the General Conference, but would be told that anywhere from fifteen to twenty-five bishops may share in the task of presiding at any quadrennial meeting of the General Conference. If one were to go to the president of the Judicial Council, he or she would be told, 'All we do is decide cases.'
>
> • • •
>
> "This is simply to illustrate the fact that power and authority are widely dispersed within The United Methodist Church, undoubtedly deliberately so. We have inherited from the founders of America a rather keen distrust of too much power centralized in one

person. There is not only not a head person, there are no headquarters of our church. This is not necessarily bad, but we should recognize that this general lack of central direction over the years has resulted in our various boards and agencies pretty much going their own independent ways, each developing its own programs which sometimes overlapped with programs of our other agencies and sometimes actually conflicted. . ."

Except for the quadrennial General Conference, there is no person or group who can speak for or commit the entire denomination to action. *The Book of Discipline,* ¶ 612. The affidavit of Ewing Wayland (Ex. V, Ex. L thereto) demonstrates, without contradiction by the plaintiffs below, that the United Methodist Church, in its denominational entirety and as distinguished from its affiliated organizations, has never:

(1) Employed any person or held any employer identification number;

(2) Held any bank account;

(3) Issued any check, note or draft;

(4) Held legal title to any property, real or personal;

(5) Except for "covenants" of religious cooperation and comity with other religious groups, entered into any contract;

(6) Filed a tax return;

(7) Maintained a denominational headquarters; or

(8) Established any officers for the entire denomination, and specifically, has never had a chief executive or other head person.

Ex. V, Ex. L thereto, ¶ 2; Ex. H, Ex. G thereto at ¶ 7; Wayland Dep. at 231.

The plaintiffs in *Barr* and the related cases have never specifically stated who they believe controls or can speak for the entire denomination. They have indicated that they

would seek to enforce any judgment they obtain against the entire denomination by levying against all gifts of "general funds" made by local church numbers for the specific support of national and global ministries of the Church, regardless of what denominational unit is in possession of such funds at a particular time. Thus the possible targets for levy would include United Methodist local churches, the annual conferences, the General Council on Finance and Administration acting as conduit, its twelve sister general boards and any of the hundreds of denominational units for whose religious and charitable ministries the funds are given in the first instance. Plaintiff's Answer to Petition for Hearing below, 4th Civ. No. 18244 (Supreme Court of California, 1979) at 43 n. 25.

D. Rulings Below.

On March 20, 1978, after considering the evidence of the parties and the arguments of counsel, the trial court, Honorable Ross G. Tharp, entered its Minute Order decision (App. B). The court found:

"The 'United Methodist Church' is an international religious denomination consisting of over 10,000,000 persons who worship in some 43,000 churches and missions throughout the world. The 'United Methodist Church' is a connectional structure maintained through a chain and series of periodic conferences. It has never been incorporated."

App. B at A-22.

The court held that the denomination was not sufficiently centralized to be deemed an unincorporated association subject to suit, citing an article in the Encyclopedia Brittanica which noted the diffuse organization of the denomination. *Id.* Finally, the court warned that:

"A contrary ruling would effectively destroy Methodism in this country, and would have a chilling effect on all

> churches and religious movements by inhibiting the free association of persons of similar religious beliefs."

App. B at A-22, 23. Plaintiffs appealed. On March 8, 1979, the California Court of Appeal reversed, holding that the United Methodist Church was a legal person, subject to suit.

The Court of Appeal recognized that the denomination "may be unique in that it has no single chief operating officer" (App. A at 11), but "the clearly defined operating and conceptual levels of responsibility starting with the General Conference . . . cannot be ignored." *Id.* The court also stated, without reference to the contrary expert testimony that "a persuasive argument can be made that the Council of Bishops is equivalent to the [denomination] board of directors." *Id.* The court similarly accepted other factual arguments made by plaintiff's counsel. It explicitly rejected the contrary expert testimony. App. A at A-17, 18.

The court held, however, that the question of the denomination's status was not a question of fact but involved only the application of law to uncontested facts. The court stated the law bluntly:

> "The criteria applied to determine whether an entity is an unincorporated association are no more complicated than (1) a group whose members share a common purpose, and (2) who function under a common name under circumstances where fairness requires the group to be recognized as a legal entity. Fairness includes those situations where persons dealing with the association contend their legal rights have been violated."

App. A at A-8, 9.

The Court of Appeal saw no due process or First Amendment problem in requiring the denomination to litigate as if it were a cohesive entity. And, in any event, it declined to apply First Amendment protections against judicial revision of church doctrine and polity, taking the position this would require a grant of religious immunity. App. A at A-18, 19. Finally, the Court perceived no due process problem in suing a denominational name without naming as defendants the component religious units whose assets might later be sought, in execution of a judgment against such a commonly named group, as purported "associational" assets. App. A at A-17.

Petitioners' Petition For Rehearing, filed with the Court of Appeal on March 23, 1979, was denied, without opinion, by Order of said Court entered on March 29, 1979 (App. C). After the California Supreme Court denied hearing, by Order dated May 17, 1979 (App. D), petitioners sought this Court's review.

REASONS FOR GRANTING THE WRIT

For many years, both federal courts and the courts of various states have permitted suits to be brought, as a matter of convenience in pleading, against "unincorporated associations." However, no such action has ever before involved a major international religious denomination. Rather, these suits have generally involved labor unions or other entities with a quasi-corporate structure. Nor has any court, to petitioners' knowledge, ever before defined the minimum characteristics necessary for treatment as a suable "unincorporated association." The Court of Appeal below devised and applied just such a definition. It held that any aggregation of persons or groups can be sued as an entity so long as its members (1) share a "common purpose" and (2) "function under a common name under circumstances where fairness requires the group to be recognized as a legal entity." App. A at A-9. The court made clear that considerations of "fairness" in this context could be limited to the interests asserted by those who seek to bring the action.

For the individuals and units who make up any aggregation alleged to be an unincorporated association, the

consequences of such a lawsuit may be severe. Their individual property may be at stake, so long as it can be claimed to be held for the benefit of the association, yet the suit may be in a distant forum, and the "association" may have no ability to present a concerted defense. Indeed, the association may have the independence of its members as a central tenet. Under the definition of the Court of Appeal, precisely such "aggregation" may be fused into a single legal person and deemed subject to suit. Surely every religious denomination fits the common purpose/common name rubric, even those whose members and units are most independent of one another—Congregationalists, Baptists, Unitarians. Any major religious denomination, regardless of structure, can be forced to respond, in any court, to any suit premised on the alleged acts or omissions of local religious units bearing the common name. The rubric applies equally well to wholly secular "associations" like "the Bell System" or "the Women's Movement." Individuals or groups affiliated with any such associations, under the rule of the Court of Appeals, can be subjected to lawsuits brought against the common name, regardless of their contacts with the forum state and regardless of the "association's" ability to defend.

In the present case, a loosely-structured, "connectional" religious denomination consisting of over 45,000 largely independent local churches, with no joint assets and no central management, has been subjected to a lawsuit seeking hundreds of millions of dollars in damages. To defend the lawsuit would require a restructuring of the government of the denomination to create a monolithic unit, able to speak with one voice and act in a unified manner; to default would threaten each local church, conference and board with a judgment against whatever is later deemed "association" property in its control.

The rule of Court of the Appeal has created a manifest injustice in the present case and it has potential for enormous

harm in other cases. It is an invitation for *in terrorem* litigation against a new class of defendants. This Court should grant certiorari to clarify the extent to which States can, consistent with the United States Constitution, allow aggregations of individuals and groups to be sued as entities.

I. SECTION 388 OF THE CALIFORNIA CODE OF CIVIL PROCEDURE CANNOT, CONSISTENT WITH DUE PROCESS, BE INTERPRETED TO ALLOW AN ACTION FOR DAMAGES TO BE BROUGHT AGAINST AN AGGREGATION OF PERSONS AND ENTITIES WHO HOLD NO COMMON ASSETS, AND WHO HAVE NO CENTRALIZED MANAGEMENT.

The leading California case regarding suits against unincorporated associations is *Jardine* v. *Superior Court*, 213 Cal. 301, 2 P.2d 756 (1931). In that decision, the California Supreme Court upheld the constitutionality of Section 388 of the California Code of Civil Procedure, which provided for such suits. In so doing, the court noted the historical treatment of unincorporated associations:

> "For a long time the established rule was that in the absence of statute, an unincorporated association could not sue or be sued in its common name; all the members thereof had to appear in their own names as parties plaintiff or defendant. The basic reason was that the association was not, in the eyes of the law, a legal unit or entity, and had no legal capacity to become a party to an action. The difficulty was only one of procedure, and the objection was purely technical. The liabilities or rights of the members were in no way involved, and were not, in theory, impaired by the operation of the rule. They might have brought actions if they all joined as plaintiffs, and they might have been held to any liability imposed upon them by law, if sued and served individually." 2 P.2d at 759.

The Court then noted that various statutes, such as Section 388, were enacted to change the rule regarding suits

against unincorporated associations, but only as to procedure.

> "These statutes dealt solely with the manner of bringing actions, and were not intended to effect any change in the substantive law. Members of associations had the same rights and were subject to the same liabilities as before, only now they could be sued by a less complicated and cumbersome process.

Id.

No question was raised in *Jardine* as to whether the defendant stock exchange was an unincorporated association. Its sixty members paid dues and governed their affairs through elected trustees. The only question as to applicability of the statute was whether the exchange as whole "conducted business," a requirement which has, by amendment, been removed from Section 388.[6] Accordingly, the court in *Jardine* was not called upon to determine the characteristics of an unincorporated association subject to suit.

In *United Mine Workers* v. *Coronado Coal Co.*, 259 U.S. 44 (1922), this Court had earlier held, as a matter of federal common law, that the United Mine Workers of America could be sued as an unincorporated association. There, too, the Court was not required to specify the precise parameters of an unincorporated association. However, the Court did specify those aspects of the union's organization which made suit against it appropriate.

> "The body governing the union in the interval between conventions is the International Board consisting of the principal officers, the president, vice-president and secretary-treasurer, together with a member from each district. The president has much power. He can remove or suspend International officers, appoints the national

[6] The section now reads, in relevant part, "Any partnership or other unincorporated association, whether organized for profit or not, may sue and be sued in the name which it has assumed or by which it is known."

> organizers and subordinates, and is to interpret authoritatively the constitution, subject to reversal by the International Board. When the Board is not in session, the individual members are to do what he directs them to do." 259 U.S. at 383-384.
>
> "The membership of the union has reached 450,000. The dues received from them for the national and district organizations make a very large annual total, and the obligations assumed . . . are so heavy that an extensive financial business is carried on, money is borrowed, notes are given to banks, *and in every way the union acts as a business entity, distinct from its members. No organized corporation has greater unity of action, and none is more power centered in the governing executive bodies.*" 259 U.S. at 385. (emphasis added)
>
> "It would be unfortunate if an organization with as great power as this International Union has in the raising of large funds and in directing the conduct of four hundred thousand members in carrying on, in a wide territory, industrial controversies and strikes . . . could assemble *its assets* to be used therein free from liability for injuries by torts committed in the course of such strikes. To remand persons injured to a suit against each of the 400,000 members to recover damages . . . would be to leave them remediless." 259 U.S. at 388-89. (emphasis added)

Thus, in both *Jardine* and *Coronado,* the unincorporated association found subject to suit had both a central management, capable of speaking for the association, and defined associational assets. Petitioners are aware of no decision in which a large aggregation without these characteristics has been held subject to a suit for damages.[7]

[7] *Steuer* v. *Phelps,* 41 Cal. App. 3d 468, 116 Cal. Rptr. 61 (1974) involved an action for damages against a religious group with no bylaws or directors of any kind, but the group had only nine members, and so was obviously able to act in a cohesive fashion without such formalities. In contrast one court looked to the absence of bylaws, offices, a mailing address, bank accounts, assets and obligations in determining that a committee of a sports asso-

In holding that the United Methodist Church was a suable "unincorporated association," the California Court of Appeal thus took an unprecedented action, for the denomination, as noted above, has no central executive whatever, and holds no property of any kind.

A. The Rule of Law Applied by the Court of Appeal

The Court of Appeal found the denomination to be an unincorporated association, subject to suit as an entity, by applying a unique rule of law. The court, for the first time in any reported decision, announced a sweeping definition based on "common purposes," "common name" and "fairness".

Under this novel definition, the United Methodist Church undoubtedly would be an unincorporated association. Its many constituent groups and individuals do share a common purpose, "the maintenance of worship, the edification

---

ciation could not be sued as an unincorporated association, *California Clippers, Inc.* v. *United States Soccer Football Assn.*, 314 F. Supp. 1057, 1068 (N.D. Cal. 1970) The Colorado Supreme Court concluded that an unincorporated association should have "responsible officers elected according to by-laws". *Hidden Lake Development Co.* v. *District Court*, 183 Colo. 168, 173, 515 p. 2d 632, 635 (1973). That court said: "The status of an unincorporated association must be founded on more than a bald allegation. To sue as an incorporated association in name only is insufficient. Such legal entity must in fact exist . . ." *Id.* In *Penrod Drilling Co.* v. *Johnson*, 414 F. 2d 1217, 1222 (5th Cir. 1969, the court defined the term by reference to 7 C.J.S. Associations § 1, at p. 19 (1937): "An 'association' is a body of persons acting together without a charter, but upon the methods and forms used by corporations, for the prosecution of some common enterprise". It has been suggested that the "association" as used in Rule 17(b) Fed.R.Civ.P. "refers to associations such as trade unions, fraternal organizations, business organizations, and the like". *Yonce* v. *Miners Memorial Hospital Assn., Inc.*, 161 F. Supp. 178 (W.D. Va. 1958) (welfare fund of a union held not subject to suit as an unincorporated association).

of believers, and the redemption of the world," *The Book of Discipline*, p. 19. Of course, the denomination has a name. And the court's requirement of "fairness" is satisfied by the fact that plaintiffs have asserted a legal claim against the denomination.

However, under the definition of the Court of Appeals, every religious denomination, no matter how loosely organized, is an unincorporated association subject to suit, since all have such common purposes as "salvation," and all have common names. So, too, any aggregation of persons or corporations, commercial, social or political, cohesive enough to be known by a common name, is covered by the definition. The many companies known as "the Bell System" or "the ITT group" share the common purpose of engaging in profitable commercial enterprises. If a grouping can reasonably be named, then, under the decision below, it is suable.

This cannot be the law. In any suit against an association, it is ultimately the interests of individual members or component units which are at stake. As the California Supreme Court noted in *Jardine*, suit against an association is merely a procedural device for bringing the many individual interests involved in the association before the court. If there is a genuine, centrally directed associational entity, capable of defending a lawsuit and answering in damages, as in *Jardine* or *Coronado*, these individual interests will be protected. However, if there is not such an entity, then the individual interests will not be protected. Persons or local groups may find their assets threatened in a distant forum by lawsuits brought against any "association" to which they belong, regardless of how loosely formed that organization may be.

The present case presents these due process questions starkly. First, the property rights of absent parties are being adjudicated. Plaintiffs are seeking several hundred

million dollars for wrongs they allege were committed by specific corporate bodies, such as GCFA and PSWAC, related to United Methodism. Their right to sue these entities directly is not disputed. Yet they also sue the name of the entire denomination, without pointing to any entity separate from the collection of religious units described in paragraph 2 of the complaint. Unlike the United Mineworkers in *Coronado,* there is no central management or central funds separate from the component parts of the "association." Indeed, apart from its constituent local churches, conferences, and boards, there is no United Methodist Church. Thus, the only purpose for suing the denominational name can be to obtain a judgment enforceable against assets other than those held by the four entities specifically named as defendants.

Indeed, plaintiffs have asserted a broad agency theory, and have never specifically defined the assets they believe to be those of "the United Methodist Church." The most recent statement by plaintiffs' counsel on this matter is in their brief opposing the grant of certiorari in *Trigg*. There it is asserted that the "funds" of the denomination "include *at least* $60 million per year collected at the local church level and funneled through Annual Conference treasurers to . . . GCFA." (Br. at 25 n. 13; emphasis added.) Yet these funds do not stop at GCFA. Rather, they are funneled to the general level agencies which perform the work of the denomination on the national and international level. GCFA is in no way a storehouse of unrestricted funds available for judgment, but is merely a conduit for specifically designated funds to support "general" level ministries. (See pp. 11-12, *supra.*) Thus, plaintiffs appear to seek all funds held by any entity within the denomination which are intended for national or worldwide religious or charitable ministries, and will not even limit themselves to this. Because no assets are actually held by "The United Methodist

Church," plaintiffs are conveniently able to claim the assets of any group affiliated with the denomination.

Plaintiffs have suggested, throughout this litigation, that the unnamed units of United Methodism need fear no judgment against the denomination because such a judgment would only threaten assets of the denomination as a whole. The Court of Appeal apparently accepted this argument, citing (App. A at A-17) California Corporations Code section 24002: "Only the property of an unincorporated association may be levied upon under a writ of execution issued to enforce a judgment against the association." This is cold comfort, however, when "unincorporated association" is defined so broadly as to include an aggregation which, viewed as an entity, owns no property, and when plaintiffs will not limit their claims to assets held in the name of the association. The court's unprecedented definition, together with "agency" and "alter ego" allegations, makes the property of every constituent member potential "property of an unincorporated association." This result cannot comport with the basic tenet of due process that parties not have their interests adjudicated without notice. *Mullane* v. *Central Hanover Trust Co.,* 339 U.S. 306 (1950).

Secondly, and apart from the question of whose property is at stake, the United Methodist Church, not being an entity, cannot conduct the defense of a lawsuit. As a matter of church law, no person or group of persons, other than the General Conference (whose delegates from around the world meet every four years for ten days and then adjourn *sine die*), has the authority to act as spokesman for the denomination as a whole.

> "No person, no paper, no organization has the authority to speak officially for The United Methodist Church, this right having been reserved exclusively to the General Conference under the Constitution."

The Book of Discipline, ¶ 612(1). Thus, no one within the denomination has authority to answer the complaint or

assert the position of the denomination in consultation with counsel.[8]

The difficulty, moreover, is not simply a product of one paragraph of the denomination's rules of government. As a matter of practical fact, there is no single person or body which controls the United Methodist denomination. No one within the denomination, then, can instruct counsel or assemble the information necessary to compose intelligent pleadings and build a coherent case. Similarly, no one can answer discovery requests served upon "The United Methodist Church." Plaintiffs have never claimed, and the Court of Appeal did not find, that there is any "headquarters" within the denomination. In fact, there is no central record keeping facility and no means for directing the assembly of records in a central location. Nevertheless, plaintiffs have served an exhaustive document request on the "Custodian(s) of records of the United Methodist Church," demanding, *inter alia,* any and all documents of the denomination or its predecessors (thus dating back over 200 years) which "pertain to [its] . . . organization, structure, duties, function, purpose or work." Deposition Notice filed August 3, 1979, at 10. Plaintiffs have left it to the persons served to determine who this "custodian" is and how he should exert control over 45,000 units, internationally, in screening and gathering documents. This is simply one illustration of how litigation against a large diffuse aggregation without a central executive is, as a matter of fact, wholly unworkable.

The lack of capacity to conduct litigation again ultimately harms the separate groups and entities which compose the United Methodist denomination. Even if there were assets held in the name of the denomination, the members of the association would have a strong interest in preserving those assets, much as the beneficiaries of a common fund. Yet by sanctioning the present action, the Court Appeal made no provision for adequate representation of these interests. This, again, is a manifest denial of due process. *Hansberry* v. *Lee,* 311 U.S. 32 (1940).

Finally, the decision of the Court of Appeal has the potential effect of improperly foreclosing issues which ought to be decided at trial. One of the crucial allegations of the complaint is that the defendants are enmeshed in a web of mutual "alter ego" and "agency" relationships. They deny it. Yet the Court of Appeal, by finding all of United Methodism to be a single entity, and allowing the litigation to proceed on that basis, forces defendants into the appear-

[8] The Court of Appeal apparently believed that Paragraph 612(1) of the *Book of Discipline* was overridden by Paragraph 907(4) which empowers GCFA "[t]o take all necessary legal steps to safeguard and protect the interests and rights of The United Methodist Church." App. A at A-12, 13. Yet paragraph 907(4) provides that GCFA may make provision for legal counsel only "at the request of a general agency or bishop," presumably in connection with litigation involving a constituent body of the Church. The practical interpretation of Paragraph 907(4) has invariably been that GCFA will discharge its "legal" function by (1) maintaining a collection of legal briefs in cases of interest to religion, and (2) reimbursing Annual Conferences for up to 50% of their expenses of engaging their own counsel to deal with local problems. (Wayland affidavit, Appendix D to Petition for Rehearing, below).

The Court of Appeal's March 8, 1979 Opinion constituted the first time that any court had interpreted Paragraph 907(4) as rendering GCFA, in effect, house counsel for all of United Methodism. Accordingly GCFA, through its separate counsel not of record in the present litigation, applied on April 6, 1979 to the Judicial Council of the United Methodist Church for an interpretation of its proper functions under that provision, viewed in light of Paragraph 612, forbidding "speaking for the Church". On May 25, 1979, upon consideration of this issue, in compliance with the Church-wide notice, publication and other procedural requirements for such hearings set forth in *The Book of Discipline,* the Judicial Council ruled that GCFA has no authority to become a litigation representative for the entire denomination. A published syllabus of the Judicial Council's ruling No. 458 is included in the accompanying Appendix (App. E).

ance of joint agency. And this is despite the fact that the court's test of common purpose/common name, requires no showing of unified action whatever. The result is a blurring of normally recognized distinctions between separate legal entities.

The present case, then, provides the prospect for litigation conducted against an effectively absent party—the denomination—and a judgment enforced against actually absent parties—the thousands of church units which make up the denomination, with critical issues prejudged. All of this is of no concern under the definition of "unincorporated association" devised and applied by the Court of Appeal, because this is all consistent with the "common purpose/common name" rationale.

B. Fact Finding by the Court of Appeal

The Court of Appeal reached its conclusion that the United Methodist Church was an "unincorporated association" based, it said, on the application of law (the common purpose/common name definition) to uncontested facts.

> "The facts contained in the affidavits and declarations submitted, including the information in the *Book of Discipline of the United Methodist Church* (1976), are not in dispute." App. A at A-5.

This was a necessary pre-requisite to the court's decision, since the trial court had found that the denomination was not a jural entity, and since California, like most jurisdictions, requires that deference be given by appellate tribunals to the factual conclusions of a trial court.[9]

[9] It is a settled rule in California that courts of review will not reweigh evidence if substantial evidence of record supports the judgment below, *Bancroft-Whitney Co.* v. *McHugh,* 166 Cal. 140, 142 (1913). Also, the reviewing court must imply the necessary factual findings to support the judgment if there is any substantial evidence before it. *Hall* v. *Bureau of Employment Agencies,* 64 Cal. App. 3d 482, 496 (1976), *cert. denied,* 97 S. Ct. 2187 (1977).

For the reasons noted above, the rule of law fashioned by the Court of Appeal cannot be reconciled with the requirements of due process. Perhaps in response to this problem, the Court of Appeal made numerous statements to the effect that the United Methodist Church has acted as a cohesive unity under executive direction, largely incorporating arguments by plaintiffs. See App. A. at A-9 through A-14.[10] In so doing, the court simply engaged in its own interpretation of internal church documents, and ignored inconsistent facts and opinion. The Court of Appeal specifically noted that it was "rejecting the ecclesiastical expertise furnished by persons knowledgeable in the history development and faith of United Methodism." App. at A-17, 18. The court did in fact resolve factual disputes in the course of its opinion. So that the constitutional issues raised by the "common name/common purpose" are not obscured, several of the Court of Appeal's findings of fact are here noted and placed in the context of the evidence presented to the trial court.

1. The Court of Appeal found that since *The Book of Discipline* gives the bishops of the denomination the duty of "overseeing" or "superintending" its affairs, the Council of Bishops is akin to a Board of Directors of United Methodism. App. A. at A-11. As noted above, (page 10), the expert evidence is clear that the Council of Bishops is not the managing board of all United Methodism; in fact the Council has no authority to direct *any* action by any individual or unit in the denomination. Leiffer Dep. at 142; Milhouse affidavit (App. Ex. B to Petition for Rehearing Below) at 4; Ex. H, Ex. C thereto, Milhouse affidavit herein, at Par. 7.

[10] Plaintiffs' persistent practice in this litigation has been to refer to action taken by any unit within United Methodism as that of "UMC," thus assuming the issue which is to be resolved. The Court of Appeal adopted this practice.

In 1974, long before this litigation began, Bishop Roy Short made precisely the same statements in his text *United Methodism in Theory and Practice* (at 74-75):

> "According to United Methodist law, the Council of Bishops is given no authority to act for the Church between sessions of the General Conference. Neither is it given any power of control over the Annual Conferences or over the various agencies of the Church. . . . *The Council is not a control body in United Methodism. It should be understood that back of this limitation lies almost 200 years of history.*" (Emphasis added)

2. The court found that the denomination has been involved as a "principal" in other litigation, and has been held by the courts to be a "hierarchical" church. App. A. at A-13. This represents an erroneous understanding of how the denominational name came to be used in certain litigated cases erroneously cited by plaintiffs. These cases involved local units and their properties, not the whole denomination. In the trial court, petitioners showed that all such cases were strictly internal within annual conferences involving local church disputes, and that they were the result of litigation decisions by local church personnel who acted without any external denomination direction or control. Wayland affidavit, App. Ex. A to Petition for Rehearing below; Frank Jones affidavit, Ex. V, Ex. M thereto.[11]

[11] In the entire history of the United Methodist Church and its predecessors, there is only one reported case in which the name of the entire denomination appeared in the caption. *The United Methodist Church* v. *St. Louis Crossing Independent Church,* 150 Ind. App. 574, 276 N.E. 2d 916 (1972). This suit was brought by schismatic members of a local church, seeking an injunction enforcing their claim to the property of that local church. It was they who named the denomination as a defendant, but the action was defended by a district superintendent of a district within an annual conference and by other local interests, 276 N.E.2d at 917. The capacity of the denomination was not relevant or at issue.

There are three similar trial court actions in Georgia which are unreported. In each case, a dissident group had attempted to take over the property of a local church, and the name "The United Methodist Church" was used by the annual conference and local authorities which actually brought suit against the dissidents, in order to indicate that the interests of all United Methodists were involved. See Jones affidavit, Ex. V, Ex. M thereto. The Court of Appeal refers to this affidavit as containing the belief's of "UMC's own lawyer" when the point at issue was the question of whether Frank C. Jones *had* acted as "UMC's own lawyer." The affidavit filed with the trial court showed he was acting solely on behalf of local officials in the affected Annual Conference without any external direction.

Nor is the finding that the denomination is hierarchical of significance here. The term "hierarchical", as developed by courts in determining church property disputes, is used in opposition to the "congregational" form of church government, "in which the autonomy of the local congregation is the central principle." Note, Judicial Intervention in Disputes over the Use of Church Property, 75 Harv. L. Rev. 1142, 1143-44. The "connectionalism" of the United Methodist Church is simply one form of church government within the broad hierarchical category. Id., at 1144 n. 14; *Brady* v. *Reiner,* 198 S.E.2d 812, 827 (W. Va. 1973). The designation "hierarchical" in local property cases simply has no relevance to the issues involved here.

3. The Court of Appeal observes (App. A. at A-16, 17) that, according to a 1967 publication, the Methodist Health & Welfare Certification Council of the Board of Hospitals & Homes of The United Methodist Church granted Pacific Homes "affiliate status." The opinion omits the crucial language of that report, which had been placed before the trial court, defining affiliated status as follows:

> "An affiliated . . . agency will be one which has applied for certification and has reached the level of affiliate. *An agency's church 'relationship' will be to the Annual Conference.*" (Emphasis added, Ex. V, Ex. N-6 thereto at 2.)

This clearly indicates that the homes and hospitals were not instrumentalities of any central denominational executive, but rather operated as ministries in relationship to separate annual conferences.

4. Apparently focusing upon a sentence contained in a letter from a former General Secretary of GCFA to the IRS to the effect that GCFA is the "central treasury and fiscal agent" of Methodism, and noting that five and one-half percent of total member contributions "are given annually to GCFA" (App. A. at 12), the Court suggests that GCFA is the end-recipient and keeper of denominational funds. The evidence was uncontradicted below that GCFA is not a banker or repository of The United Methodist Church. Rather, it is a conduit to pass monies, called "general" funds because of their specific allocation to general level agencies, on to its twelve sister Boards conducting various worldwide ministries at the "general level" of the denomination. GCFA is also a provider of fiscal support services, such as auditing and check-writing, sometimes referred to as "central treasury" services, to certain of these twelve boards. GCFA interacts with only a small fraction of the units composing United Methodism. Wayland Dep. at 150-152; 245-248. As stated earlier, there are no funds of the United Methodist Church, *per se,* since all assets are those of the separate constituent bodies. Espie Affidavit, Ex. V, Ex. K thereto at ¶ 4; Wayland Affidavit, Ex. V, Ex. L thereto, at ¶ 2.

5. Finally, in seeking to depict the entire denomination as a single legal entity, the Court of Appeal refers to a high-limit insurance contract covering "UMC" (App. A. at A-13), thus adopting contentions made by plaintiffs to the trial court which were contradicted by affidavit testimony. (Ex. V, Ex. K thereto). This testimony showed that the policy in question was one of thousands of separate insurance contracts taken out by the various units across the United

Methodist Church, and that it applied to only a handful of specific church units and named property locations out of tens of thousands making up the denomination. As the affidavit testimony showed, the person arranging coverage added the term "The United Methodist Church" as an "overlay" to the relatively short list of specifically named insureds in Policy Endorsement No. 1 simply as a matter of prudence, but:

> "The United Methodist Church . . . is not incorporated, holds no title to any property, real or personal, or other asset of any kind either at the scheduled locations or elsewhere. It has no employees, it has no office location or headquarters. No portion of the [annual] premium of $19,991 for this insurance policy was calculated with respect to any identifiable insurance coverage for 'The United Methodist Church' as a totality and religious connection." (*Id.,* at 5)

This policy then, was hardly a "high-limit contract of insurance on the United Methodist Church." The Court of Appeal was further mistaken in stating that the cover sheet on the policy referred to the United Methodist Church as a corporation. The "corporation" box was checked on the form, not to identify the denomination as such (which it is not), but to reflect the fact that the applicant, GCFA, was a corporation.

These factual disputes, again, were not relevant to the holding of the Court of Appeal. Even properly viewed, the United Methodist Church would be an "unincorporated association" under the common purpose/common name test which that court devised. Had the court applied a legal standard which considered the actual operations of the "association" named as defendant, it might have reviewed the facts more carefully. As the trial court rightly concluded, there is no basis for determination that the denomination operates with any centralized authoritarian polity.

C. The Finality of the Decision

Although the decision of the Court of Appeal provides that there be further proceedings against the United Methodist Church in this matter, the decision is effectively a final one against the denomination, satisfying the prerequisite for this Court's jurisdiction under 28 U.S.C. § 1257. In *Cox Broadcasting Corp.* v. *Cohn,* 420 U.S. 469, 476-87, (1974) this Court outlined four categories of cases which have been treated as final decisions for the purposes of Section 1257, even though only the federal issue presented by the cases had been finally decided by the state courts, and further proceedings remained for lower state court action. The present case fits two of the *Cox Broadcasting* categories.

First, this case appears to present a situation "where the federal claim has been finally decided, with further proceedings on the merits in the state courts to come, but in which later review of the federal issue cannot be had, whatever the ultimate outcome of the case." 420 U.S. at 481. After the decision of the Court of Appeal, the petitioners, in order to avoid default and potential judgment of over 100 million dollars, were required to file an answer on the behalf of the United Methodist Church. This answer is included as App. F in the appendix bound herewith. If plaintiffs ultimately do not prevail against the denomination, the issue of its amenability to suit will be moot. However, should the plaintiffs prevail, the petitioners' answer—even though it attempts to preserve the federal question—may be deemed a waiver.

Section 418.10 of the California Code of Civil Procedure sets forth rules of pleading which do not provide a named defendant the opportunity to answer or defend on the merits while saving jurisdictional defenses for post-judgment review. These provisions have been interpreted

as requiring that any answer be deemed an irrevocable submission to jurisdiction. *McCorkle* v. *City of Los Angeles,* 70 Cal. 2d 252, 257058, 449 P.2d 453, 74 Cal. Rptr. 389 (1969); 5 Cal. Jur. 2d § 45, 3 Cal. Jur. 3d § 20, *et seq.* Thus, unless this Court now reviews the issues raised by this petition, they may prove unreviewable. Under these circumstances, the issue is ripe for review. *Cf. North Dakota State Board of Pharmacy* v. *Snyder's Drug Stores, Inc.,* 414 U.S. 156 (1973).

Second, this case is one in which "reversal of the state court on the federal issue would be preclusive of any further litigation on the relevant cause of action," and "a refusal to immediately review the state-court decision might seriously erode federal policy." *Cox Broadcasting,* 420 U.S. at 482-83. This case presents the first of what could be a new style of *in terrorem* actions against major religious denominations, contrary to the due process guaranteed by the Constitution.

If this litigation is allowed to proceed, there is no one who can, as a matter both of church law and of fact, conduct this litigation on behalf of the entire United Methodist Church. Necessarily, the litigation would result in ineffective representation of whatever interests are found to be encompassed under the denominational name. The present petitioners have filed an answer denying the jural status of the United Methodist Church and their own authority to speak on its behalf. However, these petitioners cannot conduct a lawsuit. The members of the denomination face a potential judgment of millions of dollars with no means of defense. These constituent units of United Methodism will, as things now stand, have foregone their defenses on the merits. The question is too important and too pressing to postpone.

II. SECTION 388 OF THE CALIFORNIA CODE OF CIVIL PROCEDURE CANNOT, CONSISTENT WITH THE CONSTITUTIONAL GUARANTY OF FREE EXERCISE OF RELIGION, BE INTERPRETED TO RENDER LIABLE TO A SUIT FOR DAMAGES A RELIGIOUS DENOMINATION COMPOSED OF MANY SEPARATE ENTITIES WITH NO UNIFIED AUTHORITARIAN STRUCTURE, MANAGING BOARD OR EXECUTIVE OFFICERS AND NO JOINT DENOMINATIONAL ASSETS.

The denials of due process engendered by the decision of the Court of Appeal, outlined above, are exacerbated in this case because the free exercise of religion is involved.

This Court has made it plain, in repeated decisions, that the First Amendment, made applicable to the states through the Fourteenth, protects not only the systems of religious beliefs, but also systems of religious organization. *Serbian Eastern Orthodox Diocese* v. *Milivojevich,* 426 U.S. 696, 721-22 (1976); *Kedroff* v. *St. Nicholas Cathedral,* 344 U.S. 94, 116 (1952) ("religious freedom encompasses the power [of religious bodies] to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine." *See NLRB* v. *Catholic Bishop,* U.S. , S. Ct. (1979) (interpretation of the National Labor Relations Act to require collective bargaining for teachers in church schools would impermissibly intrude on religion); *McClure* v. *Salvation Army,* 460 F.2d 553, 560 (5th Cir. 1972) (interpreting Title VII of the Civil Rights Act of 1964 not to apply to the employment of ministers by a church).

The decision of the Court of Appeal affronts the right to free choice of religious polity in two ways. First, the court improperly determined the polity of United Methodism by explicitly rejecting all expert testimony on the subject, and substituting its own reading of church law and documents, wholly unsupported by any expert evidence. No expert witness was produced by plaintiffs at any stage of the proceeding. It is manifest that the language and usages of churchmen may be quite different from the language of courts. In the *Serbian Church* case, 426 U.S. at 714-15 n. 8, this Court quoted the following observation from *Watson* v. *Jones,* 13 Wall 679, 723 (1872): "It is not to be supposed that the judges of the civil courts can be as competent in the ecclesiastical law and religious faith [of large denominations] as the ablest men in each are in reference to their own." In its most recent religious decision, *Jones* v. *Wolf,* U.S. , 47 U.S.L.W. 4962 (July 2, 1979), this Court divided on the proper method for determining right to ownership of local church property between two schismatic groups. Both majority and minority recognized, however, that interpretation of church law and polity was a difficult task for civil courts. *Eg.,* 47 U.S.L.W. at 4964 ("neutral principles" approach desirable because it avoids "entanglement in questions of religious doctrine, polity, and practice").

By relying on its own reading of the ecclesiastical law of United Methodism, the Court of Appeal gave the denomination a form of government, centralized and authoritarian, much different from the "connectionalism" which United Methodists actually chose during a process of development over two centuries.

More critically, however, the impact of the court's decision is to force the denomination to *act* as though it were centralized and authoritarian. For, barring reversal by this Court, the members of the denomination can only defend their rights in this lawsuit by creating a central authority capable of speaking for United Methodism as an entity, binding its many independent units by the filing of legal documents, and directing its components in matters such as compliance with discovery and satisfaction of judgment. The alternative is total dissolution of the denomination—cessation of all common effort of any kind.

If the standard of jurisdiction devised in the instant case prevails, then it would follow that any class suit plaintiff

in quest of a "deep pocket" can now parlay money claims asserted against any local community church, parish, or religiously related hospital, college or orphanage into oppressive legal assaults upon whole religious systems. Only formula pleading of "alter ego" and "agency" will be necessary to achieve this unprecedented result and force any major religious denomination in the spectrum of polities, from Roman Catholic[12] to Baptist, to defend damage actions in any courthouse as an asserted "unincorporated association" irrespective of whether it is inherently capable of the task.

There is no doubt that society can and must limit the freedom of religious organizations to act, but only on behalf of "those interests of the highest order and those not otherwise served." *Wisconsin* v. *Yoder*, 406 U.S. 205, 215 (1972). The interest asserted by plaintiffs in this case is a right to recovery for alleged wrongs. There is no need to require reorganization of the polity of the United Methodist Church to serve that interest. *Any* unit of the denomination is subject to suit if it has acted wrongly; there is no claim here of religious immunity, despite plaintiffs' repeated statements to the contrary. There is no need to create an overarching central management which worshippers within the denomination have shunned since the days of John Wesley. The decision of the Court of Appeal failed to adequately consider either the impact on the exercise of religion of its application of Sec. 388 of the California Code of Civil Procedure or the alternatives to that application. In order to protect the chosen government of The United Methodist Church, this Court's review is needed.

[12] A much sounder perception of the dangers inherent in broadside actions against whole denominations is evident in *Roman Catholic Archbishop of San Francisco* v. *Superior Court*, 15 Cal. App. 3d 405 (1971). There, the California Court of Appeal, in a suit based on an alleged contract by a denominational unit in Switzerland, was unwilling to view the Roman Catholic Church as a single, indivisible entity.

CONCLUSION

For the reasons stated above, petitioners respectfully pray that their Petition for a Writ of Certiorari be granted.

Respectfully submitted,

ALBERT E. JENNER, JR.
KEITH F. BODE
EUGENE R. WEDOFF

JENNER & BLOCK
One IBM Plaza
Chicago, IL 60611
(312) 222-9350

SAMUEL W. WITWER, SR.
SAMUEL W. WITWER, JR.

WITWER, MORAN, BURLAGE & ATKINSON
125 S. Wacker Drive
Chicago, IL 60606
(312) 332-6000

ALLAN J. RENICHE
DANIEL R. SALAS
WILLIAM F. FAHEY

SULLIVAN, JONES & ARCHER
1400 Financial Square
600 "B" Street
San Diego, CA 92101
(714) 236-1611

Attorneys for those persons upon whom service of process was attempted on behalf of The United Methodist Church.

APPENDIX

APPENDIX A

CERTIFIED FOR PUBLICATION
IN THE COURT OF APPEAL,
FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

FRANK T. BARR, et al., *Plaintiffs and Appellants,* v. THE UNITED METHODIST CHURCH, *Defendant and Respondent.*	4 Civ. No. 18244 (Superior Court No. 404611)

APPEAL from an order of the Superior Court of San Diego County. Ross G. Tharp, Judge. Reversed.

Milberg, Weiss, Bershad & Specthrie, William S. Lerach, Gregg A. Johnson, Frederick J. Milberg; Wied, Granby & Alford, Colin W. Wied and David J. Yardley, attorneys for Plaintiffs and Appellants.

Sullivan, Jones & Archer, John H. Le'Estrange, Jr., Daniel R. Salas, Robert V. Vallandigham, Jr. and William F. Fahey; Witwer, Moran, Burlage & Atkinson, Samuel W. Witwer, Sr. and Samuel W. Witwer, Jr.; Musick, Peeler & Garrett, William McD. Miller III and Wayne B. Littlefield; Hughes, Hubbard & Reed, William H. Levit, Jr. and John H. Blue, attorneys for Defendant and Respondent.

Breed, Abbott & Morgan and Thomas A. Shaw, Jr., as Amici Curiae on behalf of Defendant and Respondent.

O'Melveny & Myers, Bennett W. Priest and Robert J. White; Kadison, Pfaelzer, Woodard, Quinn & Rossi and Allen Woodard, attorneys for Intervenors.

The guarantees of due process of law and religious freedom under the State and Federal Constitutions do not pro-

hibit the United Methodist Church, a legal entity under Code of Civil Procedure section 388, subdivision (a), from being sued.[1] We reverse the order of the trial court quashing service of summons on the United Methodist Church.[2]

[1] Code of Civil Procedure section 388, subdivisions (a) and (b), provides as follows:

"(a) Any partnership or other unincorporated association, whether organized for profit or not, may sue and be sued in the name which it has assumed or by which it is known.

"(b) Any member of the partnership or other unincorporated association may be joined as a party in an action against the unincorporated association. If service of process is made on such member as an individual, whether or not he is also served as a person upon whom service is made on behalf of the unincorporated association, a judgment against him based on his personal liability may be obtained in the action, whether such liability be joint, joint and several, or several."

[2] The entire text of the minute order is as follows:

"The 'United Methodist Church' is an international religious denomination consisting of over 10,000,000 persons who worship in some 43,000 churches and missions throughout the world. The 'United Methodist Church' is a 'connectional' structure maintained through a chain and series of periodic conferences. It has never been incorporated.

"A respected unbiased source, 'The Encyclopedia Britannica,' 1959 Ed., Vol. 15, p. 358, states: 'Methodism has continued for more than two centuries to proclaim a freedom of spirit as opposed to the bondage of an organization, and its appeal has been based on the reality of a personal experience of spiritual emancipation through faith in Christ.'

"The Court rules that: 'The United Methodist Church' is no more than a 'spiritual confederation' and is not a jural entity or unincorporated association subject to suit under Code of Civil Procedure 388. A contrary ruling would effectively destroy Methodism in this country, and would have a chilling effect on all churches and religious movements by inhibiting the free association of persons of similar religious beliefs. If all members of a particular faith were to be held personally liable for the transgressions of their fellow churchmen, church pews would soon be empty and the pulpits of America silent.

"Accordingly, the motion to quash service of process on 'The United Methodist Church' is granted."

The Procedural Background

Plaintiffs commenced their class action on behalf of approximately 1,950 present and former residents of the 14 retirement homes operated in California, Hawaii and Arizona by Pacific Homes Corporation (Pacific Homes) for equitable relief or damages.[3] The complaint alleged each member of the class had entered into a "continuing care agreement" with Pacific Homes;[4] that on or about February 18, 1977 Pacific Homes petitioned for relief under Chapter 11 of the Bankruptcy Act in the United States District Court for the Central District of California, and that the defendants Pacific and Southwest Annual Conference of the United Methodist Church (PSWAC), a California corporation, the General Council on Finance and Administration of the United Methodist Church (GCFA), and the United Methodist Church (UMC), were each financially responsible for the operations of Pacific Homes. Plaintiffs sought a declaration requiring each of the defendants to specifically perform the continuing care agreements between each plaintiff and Pacific Homes or for damages.

[3] The original complaint, filed September 21, 1977, contained six causes of action. The first amended complaint, filed December 2, 1977, with seven causes of action, sought the same relief as the original complaint, but added as defendants the accounting firm of Coopers and Lybrand, and the General Council on Finance and Administration of the United Methodist Church (GCFA), a corporation. Reference to the complaint includes reference to the first amended complaint.

[4] The continuing care agreement provided that Pacific Homes would furnish lifetime care, including medical, nursing and convalescent care, accommodations and in most instances, food service. Many of the plaintiffs had pre-paid their contracts and were entitled to lifetime care at no additional cost; agreements involving the remaining plaintiffs required fixed monthly payments for life, guaranteed never to increase or limited to deferred increases based upon inflation.

Plaintiffs' bases for jurisdiction over UMC in each cause of action are the allegations which state UMC was an unincorporated association, Pacific Homes was the agent of the defendants PSWAC, GCFA and UMC and in doing the acts alleged was acting within the scope of its authority as agent and with the permission, knowledge and consent of PSWAC, UMC and GCFA; each defendant or predecessor in interest was the agent of each other defendant and in doing the acts alleged, each was acting within the scope of his authority with the permission, knowledge and consent of each other defendant; and Pacific Homes was the alter ego of each defendant.

Persons upon whom service of process was attempted on behalf of UMC moved to quash the service under Code of Civil Procedure section 418.10 on the grounds that (1) UMC was merely a loose connectional system and not a jural entity capable of being sued under Code of Civil Procedure section 388, subdivision (a); and (2) to permit suit against UMC was unconstitutional as a violation of the due process, free exercise and establishment of religion provisions of the United States and California Constitutions. Plaintiffs appeal from the order granting the motion to quash service of summons (Code Civ. Proc., § 904.1, subd. (c)).

The United Methodist Church is a Jural Entity under Code of Civil Procedure Section 388, Subdivision (a)

The Status of UMC in the Litigation is a Question of Law and Not of Fact

The initial argument made by UMC is that as an elementary principle of appellate procedure, we must uphold the trial court order if it is supported by any substantial evidence. (See gen. *Bancroft-Whitney Co.* v. *McHugh* (1913) 166 Cal. 140, 142; 6 Witkin, Cal. Procedure (2d ed. 1971) Appeal, § 245, p. 4237.) The first difficulty we encounter

with this proposition is it assumes the trial judge made a factual determination. Although there was a plethora of evidence on the issue of whether UMC was an unincorporated association, the trial court explained its holding by reference to two sets of considerations. One was peculiar to Methodism with apparent reliance on the Encyclopedia Britannica as an unbiased source; the other was of general applicability to "all churches and religious movements" with the apparent assumption that the suit against UMC involved the unconstitutional interference with the free exercise of religion. Nothing is contained in the trial court order which suggests a factual determination was made which involved the process of weighing the evidence which was presented. Secondly, the analysis of whether UMC is a jural entity involves a review of data relating to the creation, existence and operation of UMC. The facts contained in the affidavits and declarations submitted, including the information in the Book of Discipline of the United Methodist Church (1976), are not in dispute. The only ostensible factual conflict which arises is related to the ultimate issue expressed in opinions of witnesses on behalf of UMC to the effect that UMC cannot be sued. "In short, this is not a true case of conflicting evidence in which a reviewing court will refuse to disturb findings based thereon." (*Cosper* v. *Smith & Wesson Arms Co.* (1959) 53 Cal. 2d 77, 81; see also *Parsons* v. *Bristol Development Co.* (1965) 62 Cal. 2d 861, 866, fn. 2.) The result which must be reached in this case does not rest on ecclesiastical expertise, but rather on principles of law. The question as to the jural status of UMC is one of law and not of fact. (*Ibid.;* cf. *Brandeburg* v. *New York Tel. & Tel. Co.* (1975) 49 Cal. App. 3d 893, 896; *Agalite-Bronson Co.* v. *K. G. Limited* (1969) 270 Cal. App. 2d 308, 310.)

The Criteria to be Applied to Determine Whether an Entity is Capable of Being Sued as an Unincorporated Association

> "For a long time the established rule was that in the absence of statute, an unincorporated association could not sue or be sued in its common name; all the members thereof had to appear in their own names as parties plaintiff or defendant. The basic reason was that the association was not, in the eyes of the law, a legal unit or entity, and had no legal capacity to become a party to an action. [Citations.] The difficulty was only one of procedure, and the objection was purely technical. The liabilities or rights of the members were in no way involved, and were not, in theory, impaired by the operation of the rule. They might have brought actions if they all joined as plaintiffs, and they might have been held to any liability imposed upon them by law, if sued and served individually. But where associations with large membership were involved, the operation of the rule frequently has inconvenient and unjust consequences, and various exceptions came to be recognized." (*Jardine* v. *Superior Court* (1931) 213 Cal. 301, 307-308.)

Code of Civil Procedure section 388, enacted to eliminate procedural problems in actions against an unincorporated association, was held constitutional in *Jardine* v. *Superior Court, supra.*

In its original form, only persons transacting business under a common name could be sued in that name, but "business" was ultimately construed so broadly it constituted a slight limitation on the right to sue an unincorporated association. (See Law Revision Commission Comment (1967 Amend.) *Herald* v. *Glendale Lodge No. 1289* (1920) 46 Cal. App. 325, 330.) The 1967 amendment to Code of Civil Procedure section 388 made clear an unincorporated association, whether organized for profit or not, could either sue or be sued in the name which it had assumed or by which it was known. The trend of case law has been the rejection of legal niceties to assure full recognition of the unincorporated association as a separate legal entity. The basis for

this rejection of procedural rigidity has been specifically articulated in labor law disputes.

> "The social and economic realities of the present-day organization of society has thus led this court and others to recognize the suability of unions. [footnote omitted.] . . . We must recognize that the society of today rests upon the foundation of group structures of all types, such as the corporation, the cooperative society, the public utility. Such groups must, of course, operate successfully within the society; one of the prerequisites to that functioning is, generally, liability to suit and opportunity for suit. To frustrate that viability by the imposition of outmoded concepts would be to impair the institutions as well as to impede the judicial process." (*Daniels* v. *Sanitarium Assn., Inc.* (1963) 59 Cal. 2d 602, 607-608; see also *Marshall* v. *International Longshoremen's & Warehousemen's Union* (1962) 57 Cal. 2d 781.)

Statutory enactments in California involving the unincorporated association have been consistent with case law development. In 1967 the Corporations Code was amended to include the definition of unincorporated association as "any partnership or other unincorporated organization of two or more persons, whether organized for profit or not . . . ." (Corp. Code, § 24000, subd. (a).) It has been made liable to third persons to the same extent as if the association were a natural person (Corp. Code, § 24001); and may protect its name and insignia (Corp. Code. §§ 21300-21310).

On a national basis, the trend continues to assure legal status to organizations where in fairness it is appropriate. For example, in *State of Georgia* v. *National Democratic Party* (D.C. Cir. 1971) 447 F.2d 1271, cert. den. Oct. 12, 1971, the National Republican Party, one of the named defendants, was found to be an unincorporated association contrary to its argument that it was composed only of state republican parties which acted in concert to conduct national

party business and that between the quadrennial conventions, the Republican National Committee handled the national affairs of the Republican National Convention. In *Ripon Society* v. *National Republican Party* (D.C. Cir. 1975) 525 F.2d 567, responding to the assertion that "no such national [Republican] party is formally constituted under any state or federal law, and that the term is merely a collective description of the individual state and territorial Republican Parties," the court said:

> "We know, either from the record or through judicial notice, that there is commonly understood to be a National Republican Party, that it is commonly referred to, and contributed to, as such, that it meets quadrennially in a national convention, and that at the last such convention it formally declared itself 'a nationwide Party,' whose 'general management' it entrusted to the Republican National Committee 'subject to direction from time to time of the National Convention.'" (*id.*, at pp. 571-572, fn. 5.)

Groups which have been included as unincorporated associations in addition to labor unions (*United Mine Workers of America* v. *Coronado Coal Co.* (1922) 259 U.S. 344 [42 S.Ct. 570]; *Juneau Spruce Corp.* v. *I. L. & W. Union* (1953) 119 Cal. App.2d 144) and political parties are social clubs, religious organizations, environmental societies, athletic organizations, condominium owners, lodges, stock exchanges and veterans.[5] The criteria applied to determine whether

[5] See, for example, ***Moose Lodge No. 107*** v. ***Irvis*** (1972) 407 U.S. 163 [92 S.Ct. 1965] (social club); ***Presbyterian Ch.*** v. ***Mary E. B. Hull Mem. Pres. Ch.*** (1969) 393 U.S. 440 [89 S.Ct. 601] (church); ***Alyska Pipeline Service Co.*** v. ***Wilderness Society*** (1975) 421 U.S. 240 [95 S.Ct. 1612]; ***Friends of Mammoth*** v. ***Board of Supervisors*** (1972) 8 Cal. 3d 247 (environmental societies); ***California State University, Hayward*** v. ***National Collegiate Athletic Assn.*** (1975) 47 Cal. App. 3d 533 (athletic organization); ***White*** v. ***Cox*** (1971) 17 Cal. App. 3d 824 (condominium owners); ***Herald*** v. ***Glendale Lodge, supra,*** 46 Cal. App. 325 (lodge); ***Jardine*** v. ***Superior Court, supra,*** 213 Cal. 301 (stock exchange); and ***Schlesinger*** v. ***Reservists Committee To Stop The War*** (1974) 418 U.S. 208 [94 S.Ct. 2925] (veterans).

an entity is an unincorporated association are no more complicated than (1) a group whose members share a common purpose, and (2) who function under a common name under circumstances where fairness requires the group be recognized as a legal entity. Fairness includes those situations where persons dealing with the association contend their legal rights have been violated. (See *Operative Plasterers', Etc., Assn.* v. *Case* (D.C. Cir. 1937) 93 F.2d 56, 65.) Formalities of quasi-corporate organization are not required (*Law* v. *Crist* (1940) 41 Cal. App.2d 862, 865; *Estate of Irwin* (1925) 196 Cal. 366, 372.) Courts have even assessed liability against a church association with no officers where there were only nine persons whose sole business transaction (aside from small purchases of printed religious material) was the purchase, by down payment, of a station wagon. (*Steuer* v. *Phelps* (1974) 41 Cal. App.3d 468).

UMC contends an essential element for legal status, the creation of associate liability in furtherance of the common purpose (*Jardine* v. *Superior Court, supra,* 213 Cal. 301, 317) is absent in the instant case because *all* members and connected bodies of the denomination have not delegated agency authority to Pacific Homes to act on behalf of UMC. This circuitous argument, however, assumes actual agency must be conferred on Pacific Homes before any defendant can be liable. Whether Pacific Homes had actual authority to act on behalf of UMC is unnecessary for the application of doctrines relating to either alter ego or agency. To hold otherwise would permit an unincorporated association to escape liability by the simple technique of requiring express consent from all units of the association.

The Organization of UMC

In resolving intra-church schisms or property disputes, courts have identified at least two categories of church

polities;[6] congregational and hierarchal. (See gen., *Watson* v. *Jones* (1872) 80 U.S. 679, 722 [74-81 S.Ct. 666]; *Kedroff* v. *St. Nicholas Cathedral of Russian O. Ch.* (1952) 344 U.S. 94 [73 S.Ct. 143].) UMC is not congregational, i.e., the local church is not the highest authority in all matters of doctrine and usage. It is hierarchal; the 43,000 local churches and 114 Annual Conferences are governed through the structure described by the Book of Discipline of the United Methodist Church (Discipline).[7] In United Methodism, "the local church is a part of the whole body of the general church and is subject to the higher authority of the organization and its laws and regulations." (*Carnes* v. *Smith* (1976) 222 S.E.2d 322, 325, cert. den. 429 U.S. 868.)

> "The Methodist Church . . . is a connectional church, governed by representative bodies, with an episcopacy whose powers and duties are constitutionally defined. It has an itinerant ministry in that its ministers are assigned by officials of The Methodist Church and are not called by local societies or subject to the control or discipline of local societies. The basic representative body of The Methodist Church is the Annual Conference made up of ministerial and lay delegates from local societies in each area embraced within an Annual Conference. An Annual Conference is divided for purposes of administration into Districts. The administration of a District is entrusted to a District Superintendent. The General Conference of the Methodist Church, made up of delegates from each Annual Conference of the Church, is the highest legislative body of the Church, determining the ecclesiastical and temporal policies of the Church. The Judicial Council is the highest judicatory body of the Church, deciding appeals taken on legal issues raised within the Church. The Discipline of The Methodist Church is the book of law of the Church containing the Articles of Religion, the Constitution, the rules of the church concerning the moral conduct of its members, and the legislation of the various General Conferences defining the form of government, the duties, powers and privileges of the members, ministers and various bodies of the Church, including the law of the Church with reference to the acquisition, conveyancing and alienation of real estate." (*Goodson* v. *Northside Bible Church* (1966) 261 F.Supp. 99, 101.)

UMC may be unique in that it has no single chief operating officer, but the clearly defined operating and conceptual levels of responsibility starting with the General Conference, "[t]he legislative body for the entire Church" (Discipline, Glossary, p. 598), the Annual Conference, the District Conference, the Charge Conference, the Local Church Conference and the local church cannot be ignored. Moreover, a persuasive argument can be made that the Council of Bishops is equivalent to the board of directors of UMC. According to the Book of Discipline, the "Council of Bishops is thus the corporate expression of episcopal leadership in the Church" which is required "to meet at stated intervals" in order to oversee "the spiritual and temporal affairs of the whole Church." (Discipline, par. 525.)

Control over the local church ranging from the restrictions on purchase or sale of estate which requires authorization from the Charge Conference and the written consent of the pastor and district superintendent (Discipline, par. 2429, 2431, 2433, pp. 547-549) to the selection of local church

[6] "Polity refers to the general governmental structure of a church, the organs of authority and the allocation and locus of its judicatory powers as defined by its own organic law." (*Brady* v. *Reiner* (1973) 198 S.E.2d 812, 827; see also Note, *Judicial Intervention in Disputes Over the Use of Church Property* (1962) 75 Harv. L. Rev. 1142, 1143-1144.)

[7] "The content of the Discipline changes quadrennially. The concept of the Discipline as setting forth the plan, polity and process by which United Methodists govern themselves remains constant . . ." (Discipline (1976) Episcopal Greetings, p. v.)

pastors is more reflective of a single entity than completely autonomous and independent units.

The day to day operation of UMC is in keeping with the reality of its organization. The GCFA, characterized by UMC in this appeal as merely a non-discretionary conduit rendering non-discretionary auditing and financial service to some of the general level agencies with United Methodism, has in fact held itself out somewhat differently. In applying for a group exemption under section 501(c) of the Internal Revenue Code of 1954, GCFA described itself as "the central treasury and fiscal agent of the United Methodist Church. The Council has been established by the General Conference to act as its finance committee and accordingly its duties are legislated in Paragraphs 837-865 of the Book of Discipline." In that application, the GCFA made reference to paragraph 843.3 of Discipline which authorizes GCFA "to take all necessary legal steps to safeguard and protect the interest and rights of the United Methodist Church." A reasonable legal inference which can be drawn from this grant and description of authority to an agent is the existence of UMC as principal. This is particularly true where that agent, in addition to being accountable for "all matters relating to the receiving, disbursing, and reporting of general church funds"[8] (Discipline, par. 906, p. 333); is required "[t]o take all necessary legal steps to safeguard and protect the interests and rights of The United Methodist Church; to maintain a file of legal briefs related to cases involving The United Methodist Church, and to make provisions for legal counsel where necessary in

[8] Approximately five and one-half percent of total member contributions are given annually to GCFA. In "What Happens To All That Money?" (1977 ed.) United Methodist Communications, Dr. Ewing T. Wayland, described as the treasurer of UMC, said: "In 1975, United Methodists giving to the support of the general church totaled $58,155,600—5.38 percent of the total amount paid by local churches for all purposes." (at p. 5)

order to protect the interests of the Church at the request of a general agency or a bishop, as the Council deems advisable." (Discipline, par. 907, subpar. 4, pp. 338-339). In addition to the cases cited previously (*Carnes* v. *Smith, supra,* 222 S.E. 2d 322; *Brady* v. *Reiner, supra,* 198 S.E. 2d 812; *Goodson* v. *Northside Bible Church, supra,* 261 F.Supp. 99, affd. 387 F.2d 534 (5th Cir. 1967)), UMC has appeared as principal in other litigation. (See *United Meth. Ch.* v. *St. Louis Crossing Ind. Meth. Ch.* (1972) 276 N.E. 2d 916; The United Methodist Church, Dr. McCoy Johnson, in his representative capacity as the District Superintendent of the American District of the South Georgia Annual Conference, etc. v. J. W. Sparrow, Civil Action No. 6881 (Superior Court of Dooly Co., Georgia, 1976).)[9] Other cases in which an agency of the UMC has been involved reiterate the hierarchal and organizational structure of Methodism. (See, e.g. *Hoffman* v. *Tieton View Community M. E. Church* (1949) 34 Wash. 2d 83, 207 P.2d 699, 705-706; *Trustees of Peninsula Annual Conference* v. *Spencer* (1962) 183 A.2d 588, 589; *Turbeville* v. *Morris* (1943) 203 S.C. 287, 26 S.E. 2d 821, 825.)

The possibility of UMC's liability has not gone unnoticed by those responsible for insurance coverage. UMC is a named insured on a high limit contract of insurance commencing June 1, 1976 to June 1, 1979, with a broad range of fidelity, casualty, property, fire, theft, medical malpractice and comprehensive general liability coverage. The policy as issued describes UMC as a corporation engaged in business as a religious organization.

[9] We are aware that counsel for UMC in the Georgia case filed his affidavit indicating the decison to include UMC as plaintiff was his alone. Whether actually authorized or not, the belief by UMC's own lawyer as to the jural status of UMC is certainly relevant to our inquiry.

In summary, UMC is a highly organized religious body working through specific agencies to accomplish laudable goals.

The Relationship Between Pacific Homes and UMC Requires UMC be Recognized as a Legal Entity

Before we examine the circumstances surrounding the activities of Pacific Homes and the alleged involvement of UMC, we wish to stress that our decision in the pleading phase of this litigation does not imply any lack of compassion by UMC or infer liability on its part. Our holding based upon neutral principles of law simply determines UMC is suable. What the outcome of that suit will be or should be is not before us.

Pacific Homes, a non-profit organization, was formed in 1929 by the Southern California Annual Conference (the predecessor of the PSWAC) of the Methodist Episcopal Church. Amended Articles of Incorporation signed in January 1929 expressly provided that the powers of the corporation subject to California law shall be "subject to the uses and Discipline of The Methodist Church as from time to time authorized and declared by the General Conference of said Church and by the Annual Conference within whose bounds the said corporation is located." The articles also provided that before either voluntary or involuntary dissolution, the corporate assets shall be subject to the Annual Conference of the Methodist Church or its successors; bylaws adopted or amended shall not be inconsistent with the Book of Discipline; and membership in the corporation was restricted to the Southern California-Arizona Annual Conference of the Methodist Church.

The relationship between Pacific Homes and UMC has continued since 1929 in a similar fashion. Through the years, the Board of Directors of Pacific Homes has been

either appointed by the Methodist Church's Annual Conference in Southern California or composed of Methodist ministers and lay persons of the Annual Conference.

In the first List of Hospitals and Homes of The Methodist Church published in 1967 by the Methodist Health and Welfare Certification Council of the Board of Hospitals and Homes of the Methodist Church, Pacific Homes was given affiliate status, the highest level attainable for that year. In addition to its relationship with UMC, certification established the quality of services rendered by Pacific Homes met the minimum basic standards for professional health and welfare services recognized by the General Board of Hospitals and Homes of the Methodist Church. Until financial difficulties started, the successful performance by Pacific Homes was pointed to with pride over a number of years in many public statements by the President of UMC's Council of Bishops.

The literature prepared by Pacific Homes distributed to persons interested in either a convalescent hospital or a retirement residence expressly stated that Pacific Homes was an agency of the United Methodist Church Southern California-Arizona Conference. In describing the cost, Pacific Homes referred to itself as being sponsored by the Southern California-Arizona Conference of the United Methodist Church and offered a special program of assistance to help a limited number of United Methodists.

Plaintiffs' complaint mirrors the literature of Pacific Homes alleging agency, sponsorship and control over Pacific Homes.

The events referred to in the pleadings and described in the documents presented to the trial court refer to activities which not only involve spiritual concerns relating to the health and welfare of either the elderly or infirm, but

which are commercial activities. The costs for lodging and the type of accommodations are primarily business decisions. UMC, in fulfilling its commitment to society, has elected to involve itself in worldly activities by participating in many socially valuable projects. It has enjoyed the benefits, both economic and spiritual, of those projects. It has even on occasion filed suit for the protection of its interests. It must now, as part of its involvement in society, be amenable to suit.

Due Process of Law Does Not Preclude UMC From Being Sued

UMC argues the due process implications of this case are inescapable. If suit against UMC is permitted, the assets of the scores of thousands of United Methodist institutions throughout the world having no contacts with either California or Pacific Homes will be subject to levy—a constitutionally impermissible result because distant Methodist units would have been unable to defend themselves on the merits of the controversy.

The complexities, both legal and factual, in the present litigation are immense. To add a constitutional requirement, however, that before UMC can be recognized as an entity, plaintiffs must also identify each asset that may be reached to assure the absence of any third party claim in that asset, is to create an issue where one does not exist. We recognize the inextricable relationship between obtaining a judgment and having it satisfied; nevertheless, to adjudicate questions on ownership of property before judgment is essentially a reversal in the process of litigation.

The due process issue described by UMC is reflected in Code of Civil Procedure section 388, subdivision (b), which provides:

> "Any member of the partnership or other unincorporated association may be joined as a party in an action against the unincorporated association. If service of process is made on such member as an individual, whether or not he is also served as a person upon whom service is made on behalf of the unincorporated association, a judgment against him based on his personal liability may be obtained in the action, whether such liability may be joint, joint and several, or several."

Before any liability can be assessed against any person, service of process on the individual in his individual capacity must be made. Plaintiffs concede that no individual has been sued by virtue of membership in the UMC. California Corporations Code section 24002 provides: "Only the property of an unincorporated association may be levied upon under a writ of execution issued to enforce a judgment against the association." Corporations Code section 21102 provides further that:

> "No presumption or inference existed prior to September 15, 1945, or exists after that date, that a member of a nonprofit association has consented or agreed to the incurring of any obligation by the association, from the fact of joining or being a member of the association, or signing its by-laws."

An action against an association sued in its common name is an action against a single defendant. (*Potts* v. *Whitson* (1942) 52 Cal. App. 2d 199, 205.) California statutes provide due process safeguards in those situations unlike the case at bench where liability is sought to be imposed against indidvdual units of the UMC neither named as a party nor served.

The Action Against UMC Does not Violate the Free Exercise and Establishment of Religion Provisions of the United States and California Constitutions

We have previously stated that UMC's status in the context of this appeal is a question of law, thus rejecting the

ecclesiastical expertise furnished by persons knowledgeable in the history, development and faith of United Methodism. Whether we may do so is challenged by UMC under both the Federal and State Constitutions.[10] UMC contends the First and Fourteenth Amendments prevent a civil court from independently examining its polity to conclude it is suable contrary to church doctrine.

There are situations specifically in internal church disputes where civil courts are required to accept the decision of the highest body of the church.

> "[T]he First and Fourteenth Amendments permit hierarchal religious organizations to establish their own rules and regulations for internal discipline and government, and to create tribunals for adjudicating disputes over these matters. When this choice is exercised and ecclesiastical tribunals are created to decide disputes over the government and direction of subordinate bodies, the Constitution requires that civil courts accept their decisions as binding upon them. (*Serbian Eastern Orthodox Diocese* v. *Milivojevich* (1976) 426 U.S. 696, 724-725)

This rule, however, has not been extended into secular disputes. Clearly the present case is secular. To defer absolutely to authoritative church experts would be to grant

[10] Amendment I of the U. S. Constitution provides in pertinent part:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. . . ."

Article I, section 4 of the California Constitution provides in pertinent part:

> "Free exercise and enjoyment of religion without discrimination or preference are guaranteed. This liberty of conscience does not excuse acts that are licentious or inconsistent with the peace or safety of the State. The Legislature shall make no law respecting an establishment of religion."

immunity to religious organizations in cases which might arise far afield from religious activities with the resultant effect that civil courts would then be subordinated to organizations which might attempt to classify themselves as religious to obtain the benefits of the shield of First Amendment protection.

California cases addressing this issue outside the realm of intra-church disputes have held that civil courts are not bound by a church's constitution or its ecclesiastical doctrine. (*Queen of Angels Hospital* v. *Younger* (1977) 66 Cal. App. 3d 359, 372; *In re Metropolitan Baptist Church of Richmond, Inc.* (1975) 48 Cal. App. 3d 850, 859.)

To hold UMC suable is not equivalent to a review of its polity thus interfering with its internal affairs in violation of the free exercise clause of the First Amendment. There is no evidence to show that rendering UMC amenable to suit would affect the distribution of power or property within the denomination, would modify or interfere with the modes of worship affected by Methodists or would have any effect other than to oblige UMC to defend itself when sued upon civil obligations it is alleged to have incurred. The cases involving UMC entities previously cited eliminates any idea there may be religious prohibitions to participation in civil litigation.

We are keenly aware of the church-state separation articulated both in our State Constitution (see *Fox* v. *City of Los Angeles* (1978) 22 Cal. 3d 792, 799-806, conc. opn. of Bird, C.J.) and Federal Constitution. We have kept firmly in mind the clauses pertaining to religious freedom are aimed at preserving government neutrality in matters pertaining to religion while securing religious goals free of government restraints. We have considered each clause forbids two quite different kinds of governmental encroachment

upon religious freedom. (See *Engle* v. *Vitale* (1962) 370 U.S. 421, 430 [82 S.Ct. 126]; see also *School District of Abington Tp., Pa.* v. *Shempp* (1936) 374 U.S. 203, 221 [83 S.Ct. 1560].) Nevertheless, nothing either our State or Federal Supreme Court has said has even remotely implied that "under the cloak of religion, persons may, with impunity, commit fraud upon the public." (*Cantwell* v. *State of Connecticut* (1940) 310 U.S. 296, 306 [60 S.Ct. 900].) The free exercise clause of the First Amendment which assumes the absolute freedom to believe does not grant absolute freedom to act. Conduct remains subject to regulation for the protection of society. (*Cantwell, supra,* at pp. 303-304.) Conduct, albeit based upon religious motivation, may be restricted by neutral legislation. (*Braunfeld* v. *Brown* (1961) 336 U.S. 599, 603 [81 S.Ct. 1144]; *Reynolds* v. *United States* (1879) 98 U.S. 145 [95-105 S.Ct. 244].) To permit unbridled behavior "would be to make the professed religious belief superior to the law of the land, and in effect, to permit every citizen to become a law onto himself. Government could exist only in name under such circumstances." (*id.,* at pp. 166-167.) To apply a different standard to determine the jural status of religious organizations as opposed to non-religious organizations in purely secular suits might very well constitute a preference for religion in violation of the establishment clause. (*School District of Abington Tp., Pa.* v. *Shempp, supra,* 374 U.S. 203.)

The trial court order reflected the concern that if individual members of a church were to be liable there would be a chilling effect on church membership. This concern, legitimate as it may be, is properly placed with the religious body to consider before becoming involved in commercial affairs and is not a consideration which may be considered in our resolution of the issue before us. A religious organization should not be relieved of its lawful obligations arising

out of secular activities because the satisfaction of those obligations may, in some tangential fashion, discourage religious activities. (See *Gospel Army* v. *City of Los Angeles* (1945) 27 Cal. 2d 232, 241-247.)

The statutory enactments involved in this action are for the purpose of providing substantive rights to citizens and to assure access to the courts, including the right to sue organizations functioning as unincorporated associations. The internal ecclesiastical judicial system of UMC does not provide any method of redress for plaintiffs. The use of the courts as a method of dispute resolution cannot be foreclosed to this class of plaintiffs who have alleged fraud, breach of contract and statutory violations because one of the named defendants is a religious body. Neither the State nor Federal Constitution may be interpreted in a manner which would deny plaintiffs the right to sue UMC.

Judgment reversed.

CERTIFIED FOR PUBLICATION.

Wiener
J.

WE CONCUR:

Staniforth
Acting P.J.

Ehrenfreund
J.*

* Judge of the Superior Court of San Diego County sitting under assignment by the Chairperson of the Judicial Council.

APPENDIX B

Minute Order Decision

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO

FRANK T. BARR, et al., Plaintiffs, vs. THE UNITED METHODIST CHURCH, et al., Defendants.	No. 404611 MINUTE ORDER

THE UNITED METHODIST CHURCH

The "United Methodist Church" is an international religious denomination consisting of over 10,000,000 persons who worship in some 43,000 churches and missions throughout the world. The "United Methodist Church" is a "connectional" structure maintained through a chain and series of periodic conferences. It has never been incorporated.

A respected unbiased source, "The Encyclopedia Britannica", 1959 Ed., Vol. 15, p. 358, states: "Methodism has continued for more than two centuries to proclaim a freedom of spirit as opposed to the bondage of an organization, and its appeal has been based on the reality of a personal experience of spiritual emancipation through faith in Christ."

The Court rules that: "The United Methodist Church" is no more than a "spiritual confederation" and is not a jural entity or unincorporated association subject to suit under Code of Civil Procedure 388. A contrary ruling would effectively destroy Methodism in this country, and would have a chilling effect on all churches and religious move-

ments by inhibiting the free association of persons of similar religious beliefs. If all members of a particular faith were to be held personally liable for the transgressions of their fellow churchmen, church pews would soon be empty and the pulpits of America silent.

Accordingly, the motion to quash service of process on "The United Methodist Church" is granted.

* * * *

/s/ Ross G. Tharp
Judge of the Superior Court

APPENDIX C

COURT OF APPEAL—STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

COURT OF APPEAL, FOURTH DIST.
MAR. 29 1979
ROBERT L. FORD, Clerk
R. J. SMITH
DEPUTY CLERK

FRANK T. BARR, et al., Plaintiffs-Appellants, vs. THE UNITED METHODIST CHURCH, et al., Defendants-Respondents.	4 Civil No. 18244 Superior Court No. 404611

BY THE COURT

The petition for rehearing is denied.

The following corrections are made:

Page 1, line 5 from bottom, "Le'Estrange" should be "L'Estrange."

Page 1, line 2 from bottom, omit "Musick, Peeler & Garrett, William McD. Miller III and Wayne B. Littlefield; Hughes, Hubbard & Reed, William H. Levit, Jr."

Page 2, line 1, omit "and John H. Blue". Page 2, line 3, omit "Defend..nt and Respondent" and insert "National Council of Churches of Christ of United States of America." Page 2, line 5, delete "Kadison, Pfaelzer, Woodard, Quinn & Rossi and Allen Woodard."

Page 6, line 8, "t" should be "T" in "The Book of Discipline . . ."

Page 8, line 5 from bottom, should read ". . . cert. den. 404 U.S. 858 (Oct. 12, 1971), . . ."

Page 13, line 7, insert "real"; ". . . sale of real estate . . ."

Page 15, line 2, delete "Methodism" and insert "UMC."
Page 22, line 5, delete period after "freedom," lowercase "s" in "(See," delete period after "1560]," and lowercase "n" in "Nevertheless."

Staniforth
Acting Presiding Justice

Copies to:

Witwer, Moran, Burlage & Atkinson—Chicago	
Sullivan, Jones & Archer—SD	L.A.D.J.
Musick, Peeler & Garrett—LA	B.W.
O'Melveny & Myers—LA	Trial Judge
Tuttle & Taylor—LA	L.A. County Law Lib.
Wied, Granby & Alford—SD	S.D. County Law Lib.
Milberg, Weiss, Bershad & Specthrie—SD	The D.T.
Superior Court—SD	
West Publ. Co.	

APPENDIX D

CLERK'S OFFICE, SUPREME COURT
4250 State Building
San Francisco, California 94102

May 17, 1979

I have this day filed Order

HEARING DENIED

In re: 4 Civ. No. 18244
Barr et al.,

vs.

United Methodist Church, et al.

Respectfully,

G. E. BISHEL
Clerk

APPENDIX E

THE UNITED METHODIST CHURCH
Judicial Council

PRESIDENT
TOM MATHENY
P.O. Box 221
Hammond, Louisiana 70401

VICE PRESIDENT
TRUMAN W. POTTER
919 Chappell Road
Charleston, W. Va. 25304

SECRETARY
HOOVER RUPERT
212 South Park Street
Kalamazoo, Michigan 49006

As Secretary of the Judicial Council of the United Methodist Church, I certify that the following decision was rendered by the Council in session May 25, 1979 in Chicago, Illinois:

IN RE: AUTHORITY OF THE GENERAL COUNCIL ON FINANCE AND ADMINISTRATION TO REPRESENT THE UNITED METHODIST CHURCH IN LITIGATION.

DECISION: Paragraph 907.4 of the *1976 Discipline* does not delegate to the General Council on Administration and Finance either the authority or the duty to sue, or to file an answer or to otherwise plead, on behalf of the United Methodist Church as a denomination.

This is Decision No. 458 of the Judicial Council, and is dated in our records, May 25, 1979.

DR. HOOVER RUPERT
Secretary, The Judicial Council
The United Methodist Church

Certified, May 29, 1979.
Kalamazoo, Michigan

CHARLES B. COPHER
3340 Lake Valley Rd. N.W.
Atlanta, Georgia 30331

ELIZABETH B. GUNDLACH
326 East Main Street
Springville, N.Y. 14141

GENE E. SEASE
1400 East Hanna Ave.
Indianapolis, Ind. 46227

PAUL A. DUFFEY
P.O. Box 6128
Montgomery, Alabama 36106

FLORENCE V. LUCAS
(Mrs. D. Rex Edwards)
144-07 228th Street
Rosedale, N.Y. 11413

LEONARD D. SLUTZ
900 Tri State Bldg.
Cincinnati, Ohio 45202

APPENDIX F

WITWER, MORAN, BURLAGE & ATKINSON
Samuel W. Witwer, Sr.
Samuel W. Witwer, Jr.
125 South Wacker Drive, Suite 2700
Chicago, Illinois 60606
(312) 332-6000

SULLIVAN, JONES & ARCHER
Allan J. Reniche
Daniel R. Salas
William F. Fahey
1400 Financial Square
600 "B" Street
San Diego, California 92101
(714) 236-1611

Attorneys For The Persons Upon Whom Service Of Process Was Attempted On Behalf Of The United Methodist Church

SUPERIOR COURT
OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

FRANK T. BARR, et al., *Plaintiffs,* vs. THE UNITED METHODIST CHURCH, et al., *Defendants.* — GEORGE HALL, et al., *Intervenors,* vs. THE UNITED METHODIST CHURCH, et al., *Defendants In Intervention.*	No. 404611 ANSWER TO CONSOLIDATED AMENDED COMPLAINT

PAUL W. MILHOUSE, CHARLES F. GOLDEN and JAMES M. WALTON-MYERS, on their motion to quash

having been determined by the California courts to be representatives of the alleged unincorporated association described and designated in Paragraph 2 of the Consolidated Amended Complaint as "The United Methodist Church," while continuing to deny that they are such representatives, and denying that the United Methodist religious denomination has capacity or duty to answer as an unincorporated association under its polity and ecclesiastical law, or under the due process and freedom of religion protections afforded by the California Constitution and the First, Fifth and Fourteenth Amendments to the Constitution of the United States, now cause "The United Methodist Church," as described in Paragraph 2 of the Consolidated Amended Complaint, not voluntarily but under protest, solely to comply with the mandate of the civil courts of California and to avoid the entry of a default, to answer as follows:

Pursuant to California Code of Civil Procedure, ¶ 431.30, each and every allegation of the Consolidated Amended Complaint ("Complaint") is denied.

AFFIRMATIVE DEFENSES

Without waiving the general denial set forth above and continuing to deny each and every allegation of the Complaint, the following affirmative defenses are asserted:

FIRST AFFIRMATIVE DEFENSE TO ALL CAUSES OF ACTION

1. By its written opinion on March 8, 1979, in *Barr* v. *United Methodist Church,* 90 Cal. App. 3d 259, 153 Cal. Rptr. 322, the California Court of Appeal, Fourth Appellate District, Division One, reinstated The United Methodist Church as a named defendant in this action, holding that it can be sued as an unincorporated association. The California Supreme Court denied hearing on May 17, 1979.

2. On May 25, 1979, the Judicial Council of The United Methodist Church ruled that neither the General Council on Finance and Administration of The United Methodist Church, nor any other person, is empowered to answer, or otherwise appear in legal proceedings on behalf of the United Methodist denomination as a totality, since the chosen polity of that denomination is not centrally directed, and, under the constitution of United Methodism (*The Book of Discipline,* at Paragraph 612), no person or unit may presume to officially represent, speak for or bind the thousands of separate religious units comprising the denomination. A copy of the Slip Opinion of the Judicial Council, now in the process of printing and publication, is attached hereto marked Exhibit "A", and incorporated by reference herein.

3. Upon application by the individuals served, the Superior Court for the County of San Diego granted the named denominational defendant an extension of time to plead until July 2, 1979.

4. Given their understanding that none of them is empowered to receive service of process on behalf of The United Methodist Church, that they are unable to speak for the denomination, and that the denomination, because of the nature of its chosen polity, lacks capacity to litigate as a unity and legal entity, the individuals served on behalf of The United Methodist Church are in the process of preparing a Petition For Writ Of Certiorari for filing in the United States Supreme Court, seeking review of the California appellate decision that The United Methodist Church can be sued as an unincorporated association. That petition will assert that The United Methodist Church is an international religious denomination and spiritual confederation but is not, either under ecclesiastical law or under federal or state constitutional principles, a single legal entity.

5. The conflict between the chosen religious polity and ecclesiastical law of United Methodism and the decision of the Fourth Appellate District, Division One, of the California Court of Appeal, must be resolved after July 2, 1979, the last day the Superior Court will allow The United Methodist Church to file responsive pleadings. The individuals served are not prepared to allow The United Methodist Church to suffer entry of a default in a case alleged to involve hundreds of millions of dollars in damages, solely because they honestly and steadfastly believe they have no authority to speak for the denomination, and that the denomination lacks capacity to litigate as a single entity.

6. The individuals served, therefore, file this Answer under protest. The requirement that they submit an answer on behalf of The United Methodist Church violates the due process of law and freedom of religion provisions of the California Constitution and the First, Fifth and Fourteenth Amendments to the United States Constitution. All jurisdictional objections which have been tendered to the civil courts to date, including, without limitation (a) matters which may be raised upon Petition For Writ of Certiorari in the United States Supreme Court, described in Paragraph 4 hereinabove, and (b) any post-judgment review herein which may become appropriate, are specifically reserved.

SECOND AFFIRMATIVE DEFENSE TO ALL CAUSES OF ACTION

7. The allegations of paragraphs 1 through 5 of the First Affirmative Defense are referred to and incorporated by reference herein as though fully set forth.

8. The requirement that The United Methodist Church be restructured and its ecclesiastical law be ignored so as to conduct litigation as a monolithic unit, rather than pre-

serving the denomination's integrity as a spiritual confederation is objected to. The individuals served specifically disclaim the capacity of The United Methodist Church to be or become an unincorporated association. Such interpretation and requirement is violative of the due process of law and freedom of religion provisions of the California Constitution and the First, Fifth and Fourteenth Amendments to the United States Constitution.

THIRD AFFIRMATIVE DEFENSE
TO ALL CAUSES OF ACTION

9. The allegations of paragraphs 1 through 5 of the First Affirmative Defense are referred to and incorporated by reference herein as though fully set forth.

10. Neither the individuals nor the purported unincorporated association, The United Methodist Church, as described in Paragraph 2 of the Complaint possess (a) any authority to speak for or represent, or (b) any power to issue directions to the following constituent units and persons of United Methodism which have separate identities, substantial autonomy, and their own distinct decision making mechanisms:

a. Approximately ten million individual adherents of United Methodism throughout the world;

b. Local Churches; a total of approximately 39,000 in the United States, and approximately 4,400 overseas;

c. Jurisdictional and Central Conferences; Five Jurisdictional Conferences as follows:

NORTH CENTRAL JURISDICTION (U.S.)
NORTHEASTERN JURISDICTION (U.S.)
SOUTH CENTRAL JURISDICTION (U.S.)
SOUTHEASTERN JURISDICTION (U.S.)
WESTERN JURISDICTION (U.S.)

Nine overseas Central Conferences, as follows:

AFRICA CENTRAL CONFERENCE
LIBERIA CENTRAL CONFERENCE
CHINA CENTRAL CONFERENCE
CENTRAL AND SOUTHERN EUROPE CENTRAL CONFERENCE
CENTRAL CONFERENCE IN THE GERMAN DEMOCRATIC REPUBLIC
CENTRAL CONFERENCE IN THE FEDERAL REPUBLIC OF GERMANY AND WEST BERLIN
NORTHERN EUROPE CENTRAL CONFERENCE
SOUTHEAST ASIA-PHILIPPINE CENTRAL CONFERENCE
SOUTHERN ASIA CENTRAL CONFERENCE

d. Annual Conferences: A total of seventy-three (73) in the United States as follows:

PACIFIC AND SOUTHWEST ANNUAL CONFERENCE ("PSWAC"), a California not-for-profit corporation, named as a defendant herein and represented by its own counsel, ALABAMA-WEST FLORIDA ANNUAL CONFERENCE, ALASKA MISSIONARY ANNUAL CONFERENCE, BALTIMORE ANNUAL CONFERENCE, CALIFORNIA-NEVADA ANNUAL CONFERENCE, CENTRAL ILLINOIS ANNUAL CONFERENCE, CENTRAL NEW YORK ANNUAL CONFERENCE, CENTRAL PENNSYLVANIA ANNUAL CONFERENCE, CENTRAL TEXAS ANNUAL CONFERENCE, DETROIT ANNUAL CONFERENCE, EAST OHIO ANNUAL CONFERENCE, EASTERN PENNSYLVANIA ANNUAL CONFERENCE, FLORIDA ANNUAL CONFERENCE, HOUSTON ANNUAL CONFERENCE, IOWA AN-

NUAL CONFERENCE, KANSAS-EAST ANNUAL CONFERENCE, KANSAS WEST ANNUAL CONFERENCE, KENTUCKY ANNUAL CONFERENCE, LITTLE ROCK ANNUAL CONFERENCE, LOUISIANA ANNUAL CONFERENCE, LOUISVILLE ANNUAL CONFERENCE, MAINE ANNUAL CONFERENCE, MEMPHIS ANNUAL CONFERENCE, MINNESOTA ANNUAL CONFERENCE, MISSISSIPPI ANNUAL CONFERENCE, MISSOURI-EAST ANNUAL CONFERENCE, MISSOURI-WEST ANNUAL CONFERENCE, NEBRASKA ANNUAL CONFERENCE, NEW HAMPSHIRE ANNUAL CONFERENCE, NEW MEXICO ANNUAL CONFERENCE, NEW YORK ANNUAL CONFERENCE, NORTH ALABAMA ANNUAL CONFERENCE, NORTH ARKANSAS ANNUAL CONFERENCE, NORTH CAROLINA ANNUAL CONFERENCE, NORTH DAKOTA ANNUAL CONFERENCE, NORTH GEORGIA ANNUAL CONFERENCE, NORTH INDIANA ANNUAL CONFERENCE, NORTH MISSISSIPPI ANNUAL CONFERENCE, NORTH TEXAS ANNUAL CONFERENCE, NORTHERN ILLINOIS ANNUAL CONFERENCE, NORTHERN NEW JERSEY ANNUAL CONFERENCE, NORTHERN NEW YORK ANNUAL CONFERENCE, NORTHWEST TEXAS ANNUAL CONFERENCE, OKLAHOMA ANNUAL CONFERENCE, OKLAHOMA INDIAN MISSIONARY ANNUAL CONFERENCE, OREGON-IDAHO ANNUAL CONFERENCE, PACIFIC NORTHWEST ANNUAL CONFERENCE, PENINSULA ANNUAL CONFERENCE, PUERTO RICO ANNUAL CONFERENCE, RED BIRD MISSIONARY ANNUAL CONFERENCE, RIO GRANDE ANNUAL CONFERENCE, ROCKY MOUNTAIN ANNUAL CONFERENCE, SOUTH CAROLINA ANNUAL

CONFERENCE, SOUTH DAKOTA ANNUAL CONFERENCE, SOUTH GEORGIA ANNUAL CONFERENCE, SOUTH INDIANA ANNUAL CONFERENCE, SOUTHERN ILLINOIS ANNUAL CONFERENCE, SOUTHERN NEW ENGLAND ANNUAL CONFERENCE, SOUTHERN NEW JERSEY ANNUAL CONFERENCE, SOUTHWEST TEXAS ANNUAL CONFERENCE, TENNESSEE ANNUAL CONFERENCE, TEXAS ANNUAL CONFERENCE, TROY ANNUAL CONFERENCE, VIRGINIA ANNUAL CONFERENCE, WEST MICHIGAN ANNUAL CONFERENCE, WEST OHIO ANNUAL CONFERENCE, WEST VIRGINIA ANNUAL CONFERENCE, WESTERN NEW YORK ANNUAL CONFERENCE, WESTERN NORTH CAROLINA ANNUAL CONFERENCE, WESTERN PENNSYLVANIA ANNUAL CONFERENCE, WISCONSIN ANNUAL CONFERENCE, WYOMING ANNUAL CONFERENCE, YELLOWSTONE ANNUAL CONFERENCE.

A total of 43 overseas Annual Conferences as follows:

ANGOLA ANNUAL CONFERENCE
CENTRAL ZAIRE ANNUAL CONFERENCE
NORTH SHALA ANNUAL CONFERENCE
RHODESIA ANNUAL CONFERENCE
SOUTHEAST AFRICA ANNUAL CONFERENCE
SOUTHERN ZAIRE ANNUAL CONFERENCE
LIBERIA ANNUAL CONFERENCE
CHINA MAINLAND CONFERENCES
AUSTRIA PROVISIONAL CONFERENCE
BULGARIA PROVISIONAL CONFERENCE
CZECHOSLOVAKIA ANNUAL CONFERENCE
HUNGARY PROVISIONAL CONFERENCE
POLAND ANNUAL CONFERENCE

SWITZERLAND-FRANCE ANNUAL CONFERENCE
YUGOSLAVIA PROVISIONAL CONFERENCE
GERMAN DEMOCRATIC REPUBLIC ANNUAL CONFERENCE
GERMAN NORTHWEST ANNUAL CONFERENCE
GERMAN SOUTH ANNUAL CONFERENCE
GERMAN SOUTHWEST ANNUAL CONFERENCE
BALTIC PROVISIONAL CONFERENCE
DENMARK ANNUAL CONFERENCE
FINLAND-FINNISH PROVISIONAL CONFERENCE
FINLAND-SWEDISH PROVISIONAL CONFERENCE
NORWAY ANNUAL CONFERENCE
SWEDEN ANNUAL CONFERENCE
MIDDLE PHILIPPINES ANNUAL CONFERENCE
MINDANAO ANNUAL CONFERENCE
NORTHEAST PHILIPPINES ANNUAL CONFERENCE
NORTHWEST PHILIPPINES ANNUAL CONFERENCE
PHILIPPINES ANNUAL CONFERENCE
SOUTHWEST PHILIPPINES ANNUAL CONFERENCE
AGRA ANNUAL CONFERENCE
BENGAL ANNUAL CONFERENCE
BOMBAY ANNUAL CONFERENCE
DELHI ANNUAL CONFERENCE
GUJARAT ANNUAL CONFERENCE
HYDERABAD ANNUAL CONFERENCE
KLUCKNOW ANNUAL CONFERENCE
MADHYA PRADESH ANNUAL CONFERENCE
MORADABAD ANNUAL CONFERENCE
NORTH INDIA ANNUAL CONFERENCE
SOUTH INDIA ANNUAL CONFERENCE

e. Annual Conference-related institutions numbering approximately 542, and including homes, hospitals, orphanages, day-care centers, colleges, and seminaries;

f. The general-level boards and agencies of United Methodism, as follows: The General Council on Finance and Administration of The United Methodist Church ("GCFA"), an Illinois not-for-profit corporation, named as a defendant herein and represented by counsel; The Board of Global Ministries of The United Methodist Church, a New York not-for-profit corporation, named as a defendant herein and represented by counsel; The Health & Welfare Ministries Division of the Board of Global Ministries of The United Methodist Church, an Illinois not-for-profit corporation, named as a defendant herein and represented by counsel; and the following additional boards together with their divisions and sub-units:

GENERAL COUNCIL ON MINISTRIES
UNITED METHODIST COMMUNICATIONS
GENERAL BOARD OF CHURCH AND SOCIETY
GENERAL BOARD OF DISCIPLESHIP
UNITED METHODIST YOUTH MINISTRY ORGANIZATION
GENERAL BOARD OF HIGHER EDUCATION AND MINISTRY
GENERAL BOARD OF PENSIONS
GENERAL BOARD OF PUBLICATION
COMMISSION OF ARCHIVES AND HISTORY
COMMISSION ON RELIGION AND RACE
COMMISSION ON THE STATUS AND ROLE OF WOMEN

g. Any other denomination-related institution not specifically enumerated above.

11. This Court is without jurisdiction over any of the units within or related to United Methodism referred to

above, except those units which have been specifically named as defendants herein.

FOURTH AFFIRMATIVE DEFENSE TO ALL CAUSES OF ACTION

12. The allegations of Paragraphs 9 and 10 of the Third Affirmative Defense are referred to and incorporated by reference herein as though fully set forth.

13. To the extent that this Answer is deemed to be on behalf of any of the units within or related to United Methodism which are referred to above, such violates the due process rights of those units.

FIFTH THROUGH TWENTIETH AFFIRMATIVE DEFENSES

14. The allegations of Paragraphs 1 through 5 of the First Affirmative Defense are referred to and incorporated by reference herein as though fully set forth.

15. On December 20, 1978, defendant herein, GCFA, filed its First Amended Answer By Defendant GCFA To The Consolidated Amended Complaint (As Modified By Plaintiffs' Motion To Dismiss) asserting 17 affirmative defenses.

16. The allegations of the Second Affirmative Defense through the Seventeenth Affirmative Defense, inclusive, asserted by defendant, GCFA, are referred to and incorporated by reference as though fully set forth herein as the Fifth Affirmative Defense through the Twentieth Affirmative Defense, inclusive.

WHEREFORE, relief is prayed for as follows:

1. That plaintiffs and intervenors take nothing by their complaint;

2. For such further relief as the Court deems just.

DATED: July 2, 1979

WITWER, MORAN, BURLAGE & ATKINSON

By _____
Samuel W. Witwer

SULLIVAN, JONES & ARCHER

By _____
Daniel R. Salas

Attorneys for the Persons Upon Whom Service of Process Was Attempted on Behalf of The United Methodist Church